APPELLATE COURT
OF THE
STATE OF CONNECTICUT

AC 45401

X06-UWY-CV-18-6046436S
X06-UWY-CV-18-6046437S
X06-UWY-CV-18-6046438S

ERICA LAFFERTY, ET AL.
V.
ALEX EMRIC JONES, ET AL.

WILLIAM SHERLACH
V.
ALEX EMRIC JONES, ET AL.

WILLIAM SHERLACH, ET AL.
V.
ALEX EMRIC JONES, ET AL.

PLAINTIFFS-RESPONDENTS' OPPOSITION TO EMERGENCY MOTION FOR REVIEW

FOR THE PLAINTIFFS-RESPONDENTS:

COLIN S. ANTAYA
ALINOR C. STERLING
CHRISTOPHER M. MATTEI
MATTHEW S. BLUMENTHAL
KOSKOFF, KOSKOFF & BIEDER, P.C.
350 FAIRFIELD AVENUE
BRIDGEPORT, CT 06604
TEL: (203) 336-4421
FAX: (203) 368-3244
cantaya@koskoff.com
asterling@koskoff.com
cmattei@koskoff.com
mblumenthal@koskoff.com

On March 23 and 24, Alex Jones chose to go on the air rather than go under oath. He asked the trial court to excuse him, presenting "evidence" and "argument" to the court that he could "not go to deposition because he was remaining home under [medical] supervision," which initially "deceived" the court. Ex. A, DN 753, 3/23/22 Hrg. Tr. 17:2-7.[1] In fact, Mr. Jones was not at home under medical supervision; he was at his studio broadcasting. *See* Ex. B, DN 733, Notice to Court. Even after the court ordered Mr. Jones to attend his deposition, he refused. The trial court rightly held him in contempt and issued orders to cause Mr. Jones to sit for deposition.

Contempt sanctions must remain in effect until Mr. Jones is deposed. Mr. Jones's Motion for Emergency Review represents that he will appear for his deposition on April 11. *See* Mot. for Emerg. Rev. at 6. Mr. Jones also agreed to be deposed on March 23 and March 24, and, as his actions have shown, a representation from Mr. Jones does not amount to real-life attendance at a deposition. The escalating fines were imposed to compel Mr. Jones's appearance and should not be set aside merely because he has yet again said he will appear. Mr. Jones cannot avoid contempt penalties with court filings: "[b]y its very nature the court's contempt power, 'to be effectual, must be immediate and peremptory, and not subject to suspension at the mere will of the offender.'…." *Papa v. New Haven Fed'n of Teachers*, 186 Conn. 725, 731 (1982). No stay is appropriate or warranted, and the Emergency Motion for Review should be denied.[2]

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[1] The plaintiffs have attached key filings and transcript as exhibits. All references, including the attached exhibits are available on the trial court electronic docket for the case.

[2] Further, to the extent the Jones defendants' Motion suggests the existence of an agreement concerning the date or manner of Mr. Jones's deposition, that suggestion is incorrect. The plaintiffs have not entered any agreement, because the terms of the trial court's order are clear and the plaintiffs are abiding by those terms. As the trial court

I. BRIEF HISTORY OF THE CASE

The plaintiffs are individuals whose immediate family members were murdered in the Sandy Hook shooting and one first-responder to the shooting. Their Complaint alleges claims sounding in false light, intentional and negligent infliction of emotional distress, CUTPA violations, and defamation. The defendants are Alex Jones and his companies (the "Jones defendants"), who for years profited by broadcasting the lie that the Sandy Hook shooting was a hoax and the plaintiffs were crisis actors.[3]

A. Mr. Jones's Willful Refusal to Comply with a Court-Ordered Deposition

Mr. Jones's deposition was noticed to be taken in Austin, Texas on March 23 and March 24. Ex. C, DN 750, Pl. Contempt Mot. at Ex. B, Jones 3/23/22-3/24/22 Dep. Notice. Two days before his deposition was to commence, Mr. Jones sought an emergency protective order to prevent the deposition, which the trial court denied. DN 730.10. The claimed basis was that a physician had advised Mr. Jones he should not attend his deposition. DN 730, Def. 3/21/22 Am. Mot. for Protective Order at 1. At oral argument the day before Mr. Jones's deposition, counsel stated that the physician directed Mr. Jones to stay at home pending the outcome of unspecified medical testing. *E.g.* Ex. D, DN 737, 3/22/22 Hrg. Tr. at 2:15-17. Confronted with Mr. Jones's own broadcasts, Mr. Jones's counsel then conceded that Mr. Jones was broadcasting live from his studio, which is not at his home, on both the day the emergency motion was filed and the day it was argued. *Id.* at

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ordered, the plaintiffs stand prepared to depose Mr. Jones on twenty-four hours' notice. Should the Court deny his motion, Mr. Jones can choose to avoid additional fines simply by appearing sooner, which he may well do. The choice is his. In either event, the plaintiffs will simply follow the procedures the trial court has set for the deposition of Mr. Jones.

[3] An additional defendant, Genesis Communications Network, Inc., is not a party to the present motion.

18:16-17 (conceding Mr. Jones was broadcasting on March 21); Ex. B, DN 733, Notice to Court (conceding Mr. Jones was broadcasting on March 22 from the studio, which is not at his home).

The trial court denied the motion for protective order, and plaintiffs' counsel appeared for deposition in Austin on March 23. Mr. Jones did not attend. Ex. C, DN 750, Pl. Contempt Mot. at Ex. C, 3/23/22 Dep. Tr. A. Jones – Not Appearing at 6:21-24, 8:3-6 (Attorney Mattei, noting Mr. Jones's absence; Attorney Pattis, indicating Mr. Jones "has no intention to appear here today"). At an emergency hearing held March 23 and in writing thereafter, the trial court ordered Mr. Jones to appear for his deposition on March 24. Ex. A, DN 753, 3/23/22 Hrg. Tr. at 30:26-27, 31:1-2; DN 735, 3/23/22 Order.

Mr. Jones renewed his motion for protective order, again asserting medical issues. The trial court denied the renewed motion:

> Mr. Jones has by all accounts broadcast live from his studio on Monday and Tuesday, in disregard of Dr. Marble's purported instructions to stay home and rest. Additionally, plaintiffs' counsel alleges that even today, Mr. Jones called into his show, speaking on the war in Ukraine, although the court has no evidence to confirm that. While the court has no details regarding Dr. Offutt's background or qualifications, it appears both from Dr. Marble's letter that the court reviewed yesterday in camera, and from Dr. Offutt's letter today, that the medical issues, while potentially serious, are not currently serious enough to either require his hospitalization, or convince him to stop engaging in his broadcasts. Mr. Jones cannot unilaterally decide to continue to engage in his broadcasts, but refuse to participate in a deposition. The motion is denied. Of course, if, as Dr. Offutt indicates, he develops escalating symptoms such that he is hospitalized, that change in circumstance would excuse his attendance at the court ordered deposition.

DN 744.10, 3/23/22 Order. Mr. Jones did not attend his March 24 deposition. Ex. C, DN 750, Pl. Contempt Mot. at Ex. D, 3/24/22 Dep. Tr. A. Jones – Not Appearing at 4:18-21, 6:24-25; 7:1-3 (Attorney Mattei, noting Mr. Jones's absence; Attorney Pattis confirming Mr. Jones "will not be appearing here today").

B. Finding of Civil Contempt

On March 23, aware that Mr. Jones had not appeared for his March 23 deposition and having ordered him to appear for his March 24 deposition, the trial court put the Jones defendants on notice that it would hold a hearing fregarding their objections to sanctions on March 30 and set a briefing schedule leading up to that hearing. DN 734.10 3/23/22 Order. Pursuant to that briefing schedule, the plaintiffs moved to hold Mr. Jones in contempt for refusing to attend his March 23 and March 24 deposition and sought sanctions to compel Mr. Jones to sit for deposition, including that Mr. Jones be ordered to pay conditional fines until completion of his deposition, be incarcerated until completion of his deposition, and that the trial court enter conditional findings of established fact and preclude certain evidence. *See* Ex. C, DN 750, Mot. for Civ. Contempt. The Jones defendants objected, DN 752, and the plaintiffs replied, DN 784.

On March 30, the court held the previously noticed hearing. The exhibits to the plaintiffs' and Jones defendants' prior filings were received in evidence. Ex. E, DN 788, 3/30/22 Hrg. Tr. at 4:1-20. The Jones defendants did not present any new evidence. *Id.*, *passim*. After argument, the trial court held Mr. Jones in civil contempt, finding

> by clear and convincing evidence that the defendant, Alex Jones, willfully and in bad faith violated without justification several clear Court orders requiring his attendance at his depositions on March 23rd and March 24th. That is, the Court finds that Mr. Jones intentionally failed to comply with the orders of the Court and that there was no adequate factual basis to explain his failures to obey the orders of the Court.

Id. at 25:13-21.

The trial court ordered Mr. Jones to pay "conditional fines of $25,000 each weekday beginning on Friday, April 1st, increasing by $25,000 per weekday payable to the Clerk of the Court" until he chose to appear for deposition. *Id.* at 26:5-6. No fine would be incurred

on weekends or on days on which Mr. Jones completed a full day's deposition. *Id.* The trial court found "that this fine, while a conditional fine, is also coercive, but finds that it is reasonable and necessary in this matter." *Id.* at 27:2-4. The trial court explained that Mr. Jones could request reimbursement of any fines paid once he completed his deposition. *Id.* at 27:5-7. Indeed, the trial court emphasized that Mr. Jones need not pay any fine at all because he could choose to appear for a deposition on any weekday if he gave plaintiffs' counsel a mere 24-hours' notice. "[I]f Mr. Jones' counsel this afternoon informs counsel that Mr. Jones will sit for his deposition on Friday – that's sufficient notice to the parties, that's 24 hours – and if he successfully appears and sits for his deposition on Friday, there will be no fine." *Id.* at 26:12-17.

On March 30, the Jones defendants filed a motion for reconsideration, requesting that the trial court postpone the start of Mr. Jones' conditional fines until April 10. DN 786, Defs.' Mot. for Reconsid. The trial court denied the motion. DN 786.10, 3/30/22 Order.

On March 31, Mr. Jones filed with the trial court a motion to stay the court's finding of contempt. Ex. F, DN 789, Defs.' Mot. for Stay. The court denied the motion, applying controlling law to determine that balancing the equities required denying the motion:

> Having applied the "balancing of the equities" test, in which four factors warrant consideration, i.e., (1) the likelihood of success on appeal; (2) whether the stay is necessary to avoid irreparable harm; (3) the effect of the stay on other parties; and (4) the public interest, the motion for stay is denied. See *Griffin Hosp. v. Commission on Hospitals and Health Care*, 196 Conn. 451, 456-457(1985). The motion represents that Mr. Jones has notified plaintiffs' counsel that he will attend a deposition on April 11, 2022. The movants are reminded, again, that should Mr. Jones choose to purge the contempt, as this motion suggests may be the case, he can move the court to return the funds.

Ex. G, DN 789.10, 4/1/22 Order Denying Motion for Stay.

Following the contempt rulings, Mr. Jones filed an application to appeal to the Supreme Court pursuant to General Statutes § 52-265a. That appeal was returned for failure to comply with filing procedures; presumably Mr. Jones will re-file. The Jones defendants then filed this appeal. They filed the present Emergency Motion for Review on April 1, seeking review of the trial court's denial of their motion to stay.

II. LEGAL GROUNDS RELIED UPON

A. STAY STANDARD

The leading case concerning the test for discretionary stay is *Griffin Hospital v. Commission on Hospitals and Health Care*, 196 Conn. 451 (1985). *Griffin* recognizes that the trial court will apply a "balancing of the equities" test, in which four factors warrant consideration. *Id.* at 456-57. These are: (1) the likelihood of success on appeal; (2) whether the stay is necessary to avoid irreparable harm; (3) the effect of the stay on other parties; and (4) the public interest involved. *Id.* at 456. A trial court is vested with a "large measure of discretion" in granting or denying stays, and a trial court's order denying a stay is reviewed for an abuse of discretion. *Id.* at 459. None of the *Griffin* factors merited granting a stay in this case. *Id.* at 457-58. The trial court's determination to deny the stay based on a balancing of the equities was unquestionably a proper exercise of discretion.

B. Likelihood of Success on Appeal

Mr. Jones would not prevail on appeal. The undisputed facts showed willful noncompliance with a clear and unambiguous order. The trial court ordered Mr. Jones to attend his March 24 deposition three times. Ex. A, DN 753, 3/23/22 Hrg. Tr. at 31:2-8 (ordered Mr. Jones to attend on the record at the March 23 hearing) DN 735, 3/23/22 Order (written order following hearing); DN 744.10, 3/23/22 Order (denying protective order and

ordering that deposition will proceed). Mr. Jones understood the order but chose not to attend the deposition. At the March 24 deposition, Attorney Pattis represented to counsel on the record: "Mr. Jones intends to remain at home under his doctor's orders *and understands that this is not the Court's order.*" Ex. C, DN 750, Pl. Contempt Mot. at Ex. D, 3/24/22 Tr. A. Jones – Not Appearing, at 5:10-12 (emphasis supplied). That evidence alone easily proves Mr. Jones's contempt.

The trial court repeatedly put the Jones defendants on notice that they had failed to show that Mr. Jones was suffering from an emergent health condition that required him to be excused from his deposition. The trial court observed in its contempt ruling that "the Court painstakingly explained on the record that its in-camera review evaluating the doctor's notes submitted by the Jones defendants revealed that the note fell far short." DN 787, Ruling on Motion for Contempt at 2:2-5. On March 22, considering an *in camera* submission apparently authored by Dr. Marble, the court denied Mr. Jones's requests to be excused from his deposition for medical reasons. DN 730.10 (denying Emergency Motion for Protective Order). The trial court found the letter of Dr. Offutt likewise insufficient and ordered Mr. Jones to appear for deposition on March 24 on pain of being found in contempt. DN 744.10, 3/23/22 Order. At no time were the Jones defendants precluded from offering more substantial and reliable evidence; it appears they simply had none.

And the record established that Mr. Jones's supposed medical issues did not affect his ability to work. While he was asserting that he could not attend his deposition for medical reasons, Mr. Jones was appearing on his show. Mr. Jones's counsel conceded that Mr. Jones was broadcasting live on both the day the emergency motion was filed and the day it was argued. Ex. D, DN 737, 3/22/22 Hrg. Tr. at 18:16-17; Ex. B, DN 733, Jones

Defs.' 3/23/22 Notice. As the court found, and the Jones defendants did not dispute, "Mr. Jones has by all accounts broadcast live from his studio on Monday and Tuesday, in disregard of Dr. Marble's purported instructions to stay home and rest." DN 744.10, 3/23/22 Order.

The Jones defendants argue that the trial court "did not entertain any evidence, shifted the burden of production entirely to Alex Jones, and relied entirely on the representations of plaintiffs' counsel." Mot. for Emerg. Rev. at 6. That is simply wrong. The trial court held a hearing on March 30. In that hearing, the trial court indicated that it would treat exhibits to the prior filings as evidence, and the Jones defendants did not object to this approach.[4] . Ex. E, DN 788, 3/30/22 Hrg. Tr. at 4:10-20. Moreover, the Jones defendants conceded key facts. *E.g.* DN 752, Objec. at 6 ("There is no dispute that Mr. Jones did not appear for his deposition on March 24, 2022 as ordered."); Ex. C, DN 750, Pl. Contempt Mot. at Ex. D, 3/24/22 Dep. Tr. (Jones – Not Appearing) at 5:10-12 (Attorney Pattis stating, "Mr. Jones intends to remain at home under his doctor's orders *and understands that this is not the Court's order.*") (emphasis supplied). The trial court gave both sides the opportunity to present *more* evidence, and the Jones defendants elected not to do so.

> And so, Attorney Atkinson, please, the same question to you: Are you presenting any new evidence today or are we proceeding on what's been submitted to date?
> ATTY ATKINSON: Your Honor, as far as what we're prepared to do today, we were proceeding on what's been submitted.

[4] Thus the multiple exhibits attached to the pleadings of both parties, including hearing transcripts, deposition transcripts, the affidavit of Dr. Marble, the letter of Dr. Offutt, and interrogatory responses are all in evidence. *See* . Ex. E, DN 788, 3/30/22 Hrg. Tr. at 4:1-13.

Ex. E, DN 788, 3/30/22 Hrg. Tr. at 4:14-20. In sum, a hearing at which the Jones defendants had the opportunity to call witnesses and present evidence *was* held, and the Jones defendants' argument to the contrary ignores the record.[5]

The Jones defendants are highly unlikely to succeed on a future appeal.

C. Whether a Stay Is Necessary to Avoid Irreparable Harm

The Jones defendants can make no showing of irreparable harm to Mr. Jones because there is none. Mr. Jones need only complete his deposition to stop paying fines. Moreover, any fines paid may be reimbursed. On the other hand, it would cause significant harm if the Court were to grant the stay. Doing so would effectively undo the contempt ruling and remove the incentive that Mr. Jones requires to appear in the first place:

> [B]y its very nature the court's contempt power, "to be effectual, must be immediate and peremptory, and not subject to suspension at the mere will of the offender." … It is for this reason that an appeal from a civil contempt judgment does not automatically stay its execution…. Indeed, the conditional and coercive nature of civil contempt would be rendered virtually meaningless were the trial court's power automatically stayed by an appeal.

Papa, 186 Conn. at 731; *Bouffard v. Lewis*, 203 Conn. App. 116, 122-23 (2021).

The Jones defendants fail to show a likelihood of irreparable harm if a stay is denied.

D. Effect of Stay on Other Parties

[5] The Jones Defendants argue that the trial court denied their "request for additional time to produce evidence." As the trial court explained, and as the Jones defendants ignore in their briefing, they had a week's notice of the scheduled contempt hearing. *See* Ex. E, DN 788, 3/30/22 Hrg. Tr. at 15:18-20 ("this hearing today was scheduled one week ago."). During that time, they apparently made no effort to "produce" additional evidence and, importantly, did not move for a continuance. As the court explained, "I never received any motion for continuance, formally or informally, from any party indicating that more time was needed to arrange for witness testimony or other – other evidence. If I had, I would have ruled on it." *Id.* at 15:20-24.

Granting the stay would undermine the Court's contempt ruling, likely further prejudicing the plaintiffs' efforts to depose Mr. Jones. As the Court found, "the plaintiffs here simply want and are entitled to the deposition of Mr. Jones and … Mr. Jones has continued to attempt to deliberately disregard the Court's orders and attempts to manipulate the Court process." Ex. E, DN 788, 3/30/22 Hrg. Tr. at 27:20-24. The conditional fine imposed is "necessary in this matter" to coerce Mr. Jones to complete his deposition. *Id.* at 27:4.

The Jones defendants fail to show that granting a stay would not harm other parties.

E. The Public Interest

As *Papa* observes, a stay renders "meaningless" "the conditional and coercive nature of civil contempt." 186 Conn. at 731. The public has an interest in a fair adversary system, where the rules of discovery apply equally to all litigants. Mr. Jones acts as if those rules do not apply to him, but they do, and the public has an interest in seeing those rules applied to Mr. Jones. *See Lafferty v. Jones*, 336 Conn. 332, 349 (2020) ("Sanctions have long been deemed imperative to protect against the disruption or abuse of judicial processes and to ensure obedience to a court's orders, thereby preserving its authority and dignity."), *cert. denied*, 141 S. Ct. 2467 (2021).

The Jones defendants fail to show that there is a public interest in staying the contempt ruling.

III. CONCLUSION

For all these reasons, the Emergency Motion for Review should be denied.

THE PLAINTIFFS,

By: */s/ Colin S. Antaya*
COLIN S. ANTAYA
ALINOR C. STERLING
CHRISTOPHER M. MATTEI
MATTHEW S. BLUMENTHAL
KOSKOFF KOSKOFF & BIEDER
350 FAIRFIELD AVENUE
BRIDGEPORT, CT 06604
cantaya@koskoff.com
asterling@koskoff.com
cmattei@koskoff.com
mblumenthal@koskoff.com
Telephone: (203) 336-4421
Fax: (203) 368-3244
JURIS #32250

CERTIFICATION

Pursuant to Rule of Appellate Procedure 62-7, I hereby certify that on this date, a true and correct copy of the foregoing has been delivered electronically to the last known email addresses of each counsel of record for whom an e-mail has been provided, as indicated below; that the foregoing document has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and that the foregoing document complies with all applicable rules of appellate procedure.

For Alex Emric Jones, Infowars, LLC, Free Speech Systems, LLC, Infowars Health, LLC and Prison Planet TV, LLC:
Norman A. Pattis, Esq.
Cameron Atkinson, Esq.
Pattis & Smith, LLC
383 Orange Street, First Floor
New Haven, CT 06511
P: 203-393-3017
npattis@pattisandsmith.com
catkinson@pattisandsmith.com

For Genesis Communications Network, Inc.
Mario Kenneth Cerame, Esq. (via USPS)
Brignole & Bush LLC
73 Wadsworth Street
Hartford, CT 06106
P: 860-527-9973

/s/ Colin S. Antaya
COLIN S. ANTAYA
ALINOR C. STERLING
CHRISTOPHER M. MATTEI
MATTHEW S. BLUMENTHAL

EXHIBIT A

UWY-X06-CV18-6046436-S ERICA LAFFERTY, ET ALS., v. ALEX EMRIC JONES, ET ALS.	: : : :	SUPERIOR COURT COMPLEX LITIGATION AT WATERBURY, CONNECTICUT MARCH 23, 2022
UWY-X06-CV18-6046437-S WILLIAM SHERLACH, ET AL., v. ALEX EMRIC JONES, ET ALS.	: : : :	SUPERIOR COURT COMPLEX LITIGATION AT WATERBURY, CONNECTICUT MARCH 23, 2022
UWY-X06-CV18-6046438-S WILLIAM SHERLACH, ET AL., v. ALEX EMRIC JONES, ET ALS.	: : : :	SUPERIOR COURT COMPLEX LITIGATION AT WATERBURY, CONNECTICUT MARCH 23, 2022

BEFORE THE HONORABLE BARBARA N. BELLIS, JUDGE

A P P E A R A N C E S :

Representing the Plaintiffs:
ATTORNEY CHRISTOPHER MATTEI
ATTORNEY MATTHEW BLUMENTHAL
ATTORNEY ALINOR STERLING
Koskoff Koskoff & Bieder
350 Fairfield Avenue
Bridgeport, CT 06604

Representing the Defendants, Alex Emric Jones; Infowars, LLC; Free Speech Systems, LLC; Infowars Health, LLC; Prison Planet IV, LLC:
ATTORNEY NORMAN PATTIS
ATTORNEY CAMERON ATKINSON
Pattis & Smith, LLC
383 Orange Street, #1
New Haven, CT 06511

Representing the Defendants, Genesis Communications Network, Inc.:
ATTORNEY MARIO CERAME
Brignole, Bush & Lewis
73 Wadsworth Street
Hartford, CT 06106

Recorded By:
Jocelyne Grequoli
Transcribed By:
Jocelyne Grequoli
Court Recording Monitor
400 Grand Street
Waterbury, Connecticut 06702

evidence to evaluate. I -- I will say that in my opinion, I was deceived yesterday, not intentionally by Attorney Smith and I made that clear yesterday, but I was deceived by the evidence and the argument Mr. Jones made about his need not to go to the deposition because he was remaining at home under Court (sic) supervision and I will say that only because Attorney Mattei pointed out that he was -- that Mr. Jones was broadcasting live the day before the hearing and the day of the hearing, did that -- that was the only way it would have ever come to the Court's attention, which is why I asked Attorney Smith for clarification.

So I simply cannot accept argument of counsel without credible, genuine, and reasonable proof and I don't have anything here. So are you looking for an opportunity to file, even ex parte, some medical record that you want the Court to consider?

ATTY. PATTIS: Yes. And may -- May -- If I can address the candor issue, Judge? I didn't mean to distract you. I got a re -- report of how the thing went when I was between flights last night and I don't think any lawyer wants to hear a suggestion that he or his partner were less than candid with the Court and Mr. Smith may have taken your words to heart. They were devastating to our firm and we began to evaluate whether we had conflicts because if

anticipate ruling?

THE COURT: I'm going -- I'm going -- I'm going to talk to Mr. Ferraro about how we're going to do this. I'm going to be reviewing everything at 3:30 and as soon as I -- you know, no later than five, I'll either be reviewing an in-camera document or not and Mr. Ferraro hopefully, I haven't spoken to him about this yet, but hopefully he can process the orders remotely from home tonight and he has everyone's email so he can email everyone the order as well so that you'll -- listen, I don't know how much you'll be filing. If it's 60 pages and I have to do significant research, it's going to be much later tonight, but if it's not that complicated an issue and the briefing isn't that tricky, then you'll get something earlier. If, for example, Attorney Pattis tells Mr. Ferraro at 4 o'clock I'm not going to submit anything or he has already submitted something by 4 o'clock, I may very well by 4:15 be able to enter the orders and -- and Mr. Ferraro will email you and will also get those orders processed so they'll be on the website.

But I will say this: Because there is no other evidence -- proper evidence before me and because I don't need briefing on the issue of whether he should appear for his deposition, I am going to order him to appear for his deposition tomorrow ordered as part of

the official court file, so that order will be in writing and it's also on the record now. And that -- Of course, if there is evidence that's submitted that persuades the Court that it would be dangerous to his health for him to attend the deposition, then that order may change, but right now, absent any amendment to the order, he is ordered to produce himself for the deposition tomorrow.

All right. Anything further from anyone at this point?

ATTY. PATTIS: Nothing.

ATTY. MATTEI: Nothing. Thank you.

ATTY. CERAME: No, Your Honor.

THE COURT: All right. Thank you. We're adjourned.

(The matter concluded.)

* * *

UWY-X06-CV18-6046436-S	:	SUPERIOR COURT
ERICA LAFFERTY, ET ALS.,	:	COMPLEX LITIGATION
v.	:	AT WATERBURY, CONNECTICUT
ALEX EMRIC JONES, ET ALS.	:	MARCH 23, 2022
UWY-X06-CV18-6046437-S	:	SUPERIOR COURT
WILLIAM SHERLACH, ET AL.,	:	COMPLEX LITIGATION
v.	:	AT WATERBURY, CONNECTICUT
ALEX EMRIC JONES, ET ALS.	:	MARCH 23, 2022
UWY-X06-CV18-6046438-S	:	SUPERIOR COURT
WILLIAM SHERLACH, ET AL.,	:	COMPLEX LITIGATION
v.	:	AT WATERBURY, CONNECTICUT
ALEX EMRIC JONES, ET ALS.	:	MARCH 23, 2022

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Waterbury at Waterbury, Connecticut, before the Honorable Barbara N. Bellis, Judge, on the 23rd day of March, 2022.

Dated this 24th day of March, 2022 in Waterbury, Connecticut.

Jocelyne Gregoli
Court Recording Monitor

EXHIBIT B

NO. X06-UWY-CV-18-6046436 S :	SUPERIOR COURT
ERICA LAFFERTY, ET AL :	COMPLEX LITIGATION DOCKET
V. :	AT WATERBURY
ALEX EMRIC JONES, ET AL :	MARCH 23, 2022
NO. X06-UWY-CV-18-6046437 S :	SUPERIOR COURT
WILLIAM SHERLACH :	COMPLEX LITIGATION DOCKET
V. :	AT WATERBURY
ALEX EMRIC JONES, ET AL :	MARCH 23, 2022
NO. X06-UWY-CV-18-6046438 S :	SUPERIOR COURT
WILLIAM SHERLACH, ET AL :	COMPLEX LITIGATION DOCKET
V. :	AT WATERBURY
ALEX EMRIC JONES, ET AL :	MARCH 23, 2022

NOTICE TO THE COURT IN COMPLIANCE WITH THE COURT'S MARCH 22, 2022 ORDER (DKT. NO. 732.00)

The undersigned submit this notice in compliance with the Court's March 22, 2022 order directing them to clarify where Mr. Jones conducted a broadcast that occurred during a hearing that the Court held on March 22, 2022 from approximately 2 PM to 3 PM Eastern Standard Time with various recesses.

After inquiring (*see* **Exhibit A**), the undersigned report to the Court as follows:

1. The broadcast took place from Mr. Jones' usual and customary studio in Austin, Texas.
2. The studio is not located in Mr. Jones' home.
3. Mr. Jones will provide the address of his studio to the Court and the parties if requested, but he would respectfully request permission to do so under seal because his studio location has been the subject of harassment in the past.

Dated: March 23, 2022

Respectfully Submitted,

Alex Jones,
Infowars, LLC;
Free Speech Systems, LLC;
Infowars Health, LLC; and
Prison Planet TV, LLC

BY:/s/ Kevin M. Smith /s/
/s/ Cameron L. Atkinson /s/
Kevin M. Smith
Cameron L. Atkinson
PATTIS & SMITH, LLC
Juris No. 423934
383 Orange Street
New Haven, CT 06511
V: 203-393-3017 F: 203-393-9745
ksmith@pattisandsmith.com
catkinson@pattisandsmith.com

CERTIFICATION

This is to certify that a copy of the foregoing has been emailed and/or mailed, this day, postage prepaid, to all counsel and pro se appearances as follows:

For Genesis Communications Network, Inc.:
Mario Kenneth Cerame, Esq.
Brignole & Bush LLC
73 Wadsworth Street
Hartford, CT 06106

For Plaintiffs:
Alinor C. Sterling, Esq.
Christopher M. Mattei, Esq.
Matthew S. Blumenthal, Esq.
KOSKOFF KOSKOFF & BIEDER
350 Fairfield Avenue
Bridgeport, CT 06604

For Trustee Richard M. Coan

Eric Henzy, Esq.
ZEISLER & ZEISLER P.C.
10 MIDDLE STREET
15TH FLOOR
BRIDGEPORT, CT 06604

/s/ Cameron L. Atkinson /s/
Cameron L. Atkinson, Esq.

Exhibit A

NO. X06-UWY-CV-18-6046436 S :	SUPERIOR COURT
ERICA LAFFERTY, ET AL :	COMPLEX LITIGATION DOCKET
V. :	AT WATERBURY
ALEX EMRIC JONES, ET AL :	MARCH 23, 2022
NO. X06-UWY-CV-18-6046437 S :	SUPERIOR COURT
WILLIAM SHERLACH :	COMPLEX LITIGATION DOCKET
V. :	AT WATERBURY
ALEX EMRIC JONES, ET AL :	MARCH 23, 2022
NO. X06-UWY-CV-18-6046438 S :	SUPERIOR COURT
WILLIAM SHERLACH, ET AL :	COMPLEX LITIGATION DOCKET
V. :	AT WATERBURY
ALEX EMRIC JONES, ET AL :	MARCH 23, 2022

AFFIDAVIT OF KEVIN SMITH REGARDING COURT ORDERED REPORT TO THE COURT

I, Kevin Smith, being duly sworn do hereby attest:

1. I am over the age of eighteen, and I understand and believe in the obligation of an oath

2. I have personal knowledge of the facts stated herein.

3. I am a partner in the firm of Pattis & Smith, LLC, and I was responsible for representing the Jones' Defendants with regard to the hearing on the Motion for Protective Order Re: Deposition of Alex Jones. I am filing this affidavit in response to the Court's order and consistent with my obligations under Rule 3.3 of the Rules of Professional Conduct.

4. Prior to the hearing, I reviewed the motion and amended motion filed by Attorney Pattis on 3/21/2022, and discussed with him the events that necessitated their filing and giving rise to the need for a protective order.

5. I was advised that subsequent to the filing of the motions, we received a letter from a physician in support of the motion for the protective order. Given the sensitive nature of the confidential medical information contained in the letter, I was advised that our client had authorized the letter to be provided to the Court for an *ex parte* review *in camera*.

6. I made my scheduled court appearances on 3/22/22 at GA 23 in New Haven, and then returned to my office and attended the hearing at 2p.m. without any further contact with either Mr. Jones or the physician. During the course of that hearing, I represented to the Court that I was in the possession of a letter from a physician who claimed Mr.

Jones was his patient and that Mr. Jones was presently under his care. I represented to the Court that the letter from the physician indicated that the care recommended by the physician was that Mr. Jones remain home under the physician's supervision pending the results of medical tests and that the letter (dated March 21, 2022) indicated that he was presently doing so. I also knew that he had been with the physician who wrote the letter as recently as March 21, 2022.

7. During the course of the hearing, the Court asked me a series of questions regarding the letter, which I answered truthfully both as to the extent and the limitations of my knowledge regarding the letter, its author, and the extent of the medical care he had prescribed. When ordered by the Court, and as authorized by my client, I provided the letter to the Court for an *ex parte* review *in camera*.

8. Also during the course of the hearing, and prior to the Court's order to submit the letter, Plaintiffs' counsel suggested that Mr. Jones was live broadcasting at that moment from somewhere other than home. Plaintiffs' counsel provided no evidence of my client's whereabouts, and I was unaware of any broadcasting until the point in the hearing when it was alleged by Plaintiffs' counsel. As I represented to the Court, I have never watched Infowars.

9. The Court then took a break from the hearing to review the physician's letter, and reconvened at 3p.m. following its review of the physician's letter. Shortly thereafter, the Court took another recess and ordered me to get in touch with my client and determine where he was at that very moment. The Court ordered that this be done in "five minutes", despite my assertions that five minutes would likely not be sufficient time to accomplish what the Court had ordered.

10. During the allotted time, both attorney Atkinson and I attempted to contact the client and his associates, but to no avail. I also attempted to contact attorney Pattis, however he was unavailable due to being in flight and his phone was set to "airplane mode".

11. When the Court reconvened, I apprised the Court of my unsuccessful efforts to accomplish what had been ordered in the five minutes.

12. When questioned by the Court, I again represented to the Court the circumstances surrounding my receipt of the letter, my understanding of its contents, and the representation made within the letter that Mr. Jones had been advised and according to the physician's letter was remaining home under supervision pending the results of medical tests. I further advised the Court that the first indication I had that Mr. Jones was anywhere other than at home under his doctor's supervision had come earlier during the proceedings when attorney Mattei claimed that Mr. Jones was live broadcasting from somewhere other than his home.

13. Following the hearing, I was able to get in touch with attorney Pattis around 4p.m., and he was thereafter able to get in touch with Mr. Jones.

14. At approximately 5p.m. I learned from attorney Pattis that Mr. Jones had broadcasted on March 22, 2022 from his usual and customary studio in Austin, Texas. The studio is not located in his home.

I, Kevin Smith, certify that this statement is complete, true and accurate, to the best of my knowledge and recollection.

Dated this 23rd day of March, 2022.

Kevin Smith, Affiant

Signed and sworn to before me this 23rd day of March, 2022, at New Haven, Connecticut.

Cameron L. Atkinson
Commissioner of the Superior Court
Juris No. 442289

EXHIBIT C

NO. X06-UWY-CV18-6046436-S	**:**	**SUPERIOR COURT**
ERICA LAFFERTY, ET AL.	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL.	**:**	**MARCH 25, 2022**

NO. X06-UWY-CV18-6046437-S	**:**	**SUPERIOR COURT**
WILLIAM SHERLACH	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL.	**:**	**MARCH 25, 2022**

NO. X06-UWY-CV18-6046438-S	**:**	**SUPERIOR COURT**
WILLIAM SHERLACH, ET AL.	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL.	**:**	**MARCH 25, 2022**

MOTION FOR FINDING OF CIVIL CONTEMPT, ISSUANCE OF ORDERS TO SECURE ALEX JONES ATTENDANCE AT DEPOSITION, AND ISSUANCE OF FURTHER SANCTIONS ORDERS

Alex Jones is in contempt of this Court. He is so afraid of being deposed in this case that he refused to attend his own deposition, even after the Court ordered him to do so. His invented excuses for his absence only confirm his contempt. Twice Mr. Jones sought "emergency" protective orders based on bogus argument that he was unable to attend his deposition due to health concerns. The Court appropriately rejected those efforts, finding, in part, that the Court

had been "deceived by the evidence and the argument Mr. Jones made" concerning his health restrictions. Ex. A, 3/23/22 Hrg. Tr. at 17:2-5.

By order of the Court, Mr. Jones was required to appear for his deposition on March 23, 2022. He did not. By a subsequent order of the Court and on pain of contempt, Mr. Jones was required to appear for his deposition on March 24, 2022. He did not. It is impossible to overstate the level of contempt that Mr. Jones has shown for the Court's authority throughout this litigation. It is also impossible to overstate the contempt he has shown for the plaintiffs. With dignity and courage, the plaintiffs subjected themselves to hours and hours of painful questioning by Mr. Jones's lawyers – and Mr. Jones plays sick when it is his turn to tell the truth under oath. He begs his audience to send him money to support his legal defense[1] and then ducks his deposition.

It is absolutely no surprise that today – the day after he skipped his deposition – Mr. Jones was back on the air from his studio, explaining to his audience that the emergent medical condition that supposedly manifested just days before his deposition turned out to be "a blockage in his sinus."[2] Now that the blockage has cleared, he feels "like a new person." *Id*. It is no coincidence that Mr. Jones's sinus cleared as soon as plaintiffs' counsel cleared Texas airspace.

The plaintiffs now move the Court to enter a finding of civil contempt and to issue orders to coerce Mr. Jones's attendance at deposition, and to coerce that attendance immediately. More specifically, the plaintiffs move the Court to order *all* of the following:

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[1] *See* Save Infowars Legal Defense Fund, https://www.givesendgo.com/G2CK4) (last accessed March 25, 2022).

[2] *See* The Alex Jones Show, originally aired at https://www.infowars.com/show/ (March 25, 2022).

A) That Mr. Jones is adjudicated to be in contempt of court; and that such contempt may be purged when Mr. Jones sits for deposition at the offices of Koskoff, Koskoff & Bieder, PC; 350 Fairfield Avenue, Bridgeport, Connecticut and completes his deposition;

B) That Mr. Jones's profit-motives for broadcasting lies about the plaintiffs and the Sandy Hook shooting, his intent to harm the plaintiffs through those lies, and his culpable and malicious subjective intent are all established, and he is precluded from offering evidence to the contrary, and that these findings and preclusions will become permanent if Mr. Jones does not complete his deposition by April 15, 2022;[3]

C) That Mr. Jones is to pay conditional fines beginning at $25,000 per day and escalating to $50,000 per day to the Clerk of the Superior Court until he completes his deposition; and

D) That Mr. Jones is to be incarcerated until he sits for deposition[4]; and

E) That Mr. Jones is to pay to the plaintiffs' fees and costs incurred in connection with the deposition that Mr. Jones failed to attend, including, but not limited to time expended by plaintiffs' counsel and staff in the preparation, arrangement and travel to/from the deposition, lodging, transportation, and deposition costs associated with the court reporter, videographer and venue; and

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[3] Mr. Jones's deposition would cover a broad range of topics, of which subjective intent is the most important. Framing the exact wording of these findings and preclusions is beyond the scope of what can be accomplished under the time frame set for this brief, as is identifying all the findings and exclusions that would be necessary if he is not deposed. The plaintiffs reserve the right to supplement and develop these findings, both with supplemental briefing to support this Motion and at a later date, if Mr. Jones is not deposed.

[4] The plaintiffs recognize that this penalty would need to be enforced in Texas. Nonetheless, the Court should issue them.

F) That the plaintiffs are entitled to such scheduling accommodations as their counsel may require due to the time wasted by Mr. Jones's willful refusal to attend his deposition, with the understanding that any such accommodations will *not* be reason for Mr. Jones to seek an extension of the trial date; and

G) Any other measures the Court deems appropriate to coerce Mr. Jones's attendance at his deposition, or to remedy the prejudice to the plaintiffs.

I. WILLFUL REFUSAL TO COMPLY WITH COURT-ORDERED DEPOSITION

Mr. Jones's deposition was noticed to be taken in Austin, Texas on March 23 and March 24. Ex. B, Jones 3/23/22-3/24/22 Dep. Notice.

Two days before his deposition was to commence, Mr. Jones's counsel sought an emergency protective order to prevent the deposition, which the Court denied. DN 730.10. The claimed basis was that a physician had advised Mr. Jones he should not attend his deposition. DN 730, Def. 3/21/22 Am. Mot. for Protective Order at 1. At oral argument the day before Mr. Jones's deposition, counsel stated that the physician directed Mr. Jones to stay at home pending the outcome of unspecified medical testing. *E.g.* DN 737, 3/22/22 Hrg. Tr. at 2:15-17. Confronted with Mr. Jones's own broadcasts, Mr. Jones's counsel then conceded that Mr. Jones was broadcasting live from his studio, which is not at his home, on both the day the emergency motion was filed and the day it was argued. DN 737, 3/22/22 Hrg. Tr. at 18:16-17 (conceding Mr. Jones was broadcasting on March 21); DN 733, Jones Defs.' 3/23/22 Notice (conceding Mr. Jones was broadcasting on March 22 from the studio, which is not at his home).

The Court denied the motion for protective order, and plaintiffs' counsel appeared for deposition in Austin on March 23. Mr. Jones did not attend. Ex. C, 3/23/22 Dep. Tr. A. Jones –

Not Appearing at 6:21-24, 8:3-6 (Attorney Mattei, noting Mr. Jones's absence; Attorney Pattis, indicating Mr. Jones "has no intention to appear here today").

At an emergency hearing held March 23, the Court ordered Mr. Jones to appear for his deposition March 24. Ex. A, 3/23/22 Hrg. Tr. at 30:26-27; 31:1-2 ("I am going to order [Mr. Jones] to appear for his deposition tomorrow ordered as a part of the official court file, so that order will be in writing and it's also on the record now."); DN 735, 3/23/22 Order.

Mr. Jones renewed his motion for protective order, again asserting medical issues. The Court found that

> Mr. Jones has by all accounts broadcast live from his studio on Monday and Tuesday, in disregard of Dr. Marble's purported instructions to stay home and rest. Additionally, plaintiffs' counsel alleges that even today, Mr. Jones called into his show, speaking on the war in Ukraine, although the court has no evidence to confirm that. While the court has no details regarding Dr. Offutt's background or qualifications, it appears both from Dr. Marble's letter that the court reviewed yesterday in camera, and from Dr. Offutt's letter today, that the medical issues, while potentially serious, are not currently serious enough to either require his hospitalization, or convince him to stop engaging in his broadcasts. Mr. Jones cannot unilaterally decide to continue to engage in his broadcasts, but refuse to participate in a deposition. The motion is denied. Of course, if, as Dr. Offutt indicates, he develops escalating symptoms such that he is hospitalized, that change in circumstance would excuse his attendance at the court ordered deposition.

DN 744.10, 3/23/22 Order.

Mr. Jones did not attend his March 24 deposition. Ex. D, 3/24/22 Dep. Tr. A. Jones – Not Appearing at 4:18-21, 6:24-25; 7:1-3 (Attorney Mattei, noting Mr. Jones's absence; Attorney Pattis confirming Mr. Jones "will not be appearing here today").

I. CIVIL CONTEMPT

"Where ... the dispute is between private litigants and the purpose for judicial intervention is remedial, then the contempt is civil, and any sanctions imposed by the judicial authority shall be coercive and nonpunitive, including fines, to ensure compliance and compensate the complainant for losses." Prac. Bk. § 1-21A.

"The court's authority to impose civil contempt penalties arises not from statutory provisions but from the common law. The penalties which may be imposed, therefore, arise from the inherent power of the court to coerce compliance with its orders. In Connecticut, the court has the authority in civil contempt to impose on the contemnor either incarceration or a fine or both." *Papa v. New Haven Federation of Teachers,* 186 Conn. 725, 737-38 (1982); *Financial Holdings, LLC v. Lyons,* 129 Conn. App. 380, 385 (2011) ("Sanctions for civil contempt may be either a fine or imprisonment; the fine may be remedial or it may be the means of coercing compliance with the court's order and compensating the complainant for losses sustained.")

"Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order and to compensate the complainant for losses sustained." *DeMartino v. Monroe Little League, Inc.,* 192 Conn. 271, 278-79 (1984). In civil contempt the [punishment] must be conditional and coercive and may not be absolute ... To effectuate the purpose of civil contempt, the contemnor should be able to obtain release from the sanction imposed by the court by compliance with the judicial decree." *Connolly v. Connolly,* 191 Conn. 468, 482 (1983). It is important that the contempt order clearly define how the contemnor may purge the contempt: "[I]n civil contempt proceedings, the contemnor must be in a position to purge himself."

Mays v. Mays, 193 Conn. 261, 266 (1984). Thus a coercive penalty imposed under the contempt power should "specify" what the contemnor "must do in order to purge himself of the contempt." *Id.*

"The evaluation of civil contempt penalties depends to a great extent on whether the penalties are considered at the time they are first conditionally imposed for the purpose of coercing compliance or are considered after the contempt has been purged and the penalties are finalized." *Papa*, 186 Conn. at 737-38. "When the penalties are first imposed, the propriety of the court's exercise of its discretion turns on the reasonableness of the amount of the coercion that the court deems necessary, keeping in mind the court's ultimate power to reduce the penalties once the contempt has been purged." *Id.*

II. RELIEF REQUESTED

The Court must impose penalties to coerce Mr. Jones to attend and complete his deposition in Connecticut immediately, including findings of fact and exclusions of evidence, which will become permanent if Mr. Jones does not sit for deposition by April 15; escalating fines, which may be purged when Mr. Jones sits for deposition; and an order of incarceration or capias. It is appropriate to impose these penalties simultaneously, *see Papa*, 186 Conn. at 738 (trial court did not abuse its discretion in ordering simultaneous incarceration and fines), and the circumstances warrant doing so here.[5]

[5] While affirming simultaneous incarceration and fines in *Papa*, the Supreme Court observed that "it may be a better practice … for the court to impose civil contempt penalties in increasingly harsh stages so as to increase the pressure on the contemnor." *Id.* Given how little time is left for fact discovery in the scheduling order, and Mr. Jones's clear intent to delay trial as long as possible, simultaneous penalties are necessary and appropriate here.

The plaintiffs also request fees and costs incurred for travel expenses wasted and time lost due to Mr. Jones's non-appearance, such scheduling accommodations as their counsel may require due to the time wasted by Mr. Jones's willful refusal to attend his deposition, and any other penalties or relief that the Court deems appropriate.

A. FINDING OF CIVIL CONTEMPT

Civil contempt is proven by clear and convincing evidence. *Brody v. Brody*, 315 Conn. 300, 319 (2015). Mr. Jones's contempt of court is proven well beyond that standard. The Court gave notice that failure to attend the March 24 deposition would result in a finding of contempt. Ex. A, 3/23/22 Hrg. Tr. at 30:26-27; 31:1-2; DN 735, 3/23/22 Order. Mr. Jones did not attend the deposition. Ex. D, 3/24/22 Dep. Tr. A. Jones – Not Appearing at 4:18-21, 6:24-25; 7:1-3. Mr. Jones is in contempt of court, and the Court should so find. The Court should further order that the contempt may be purged when Mr. Jones has completed his deposition, to be held at the offices of Koskoff, Koskoff & Bieder PC, 350 Fairfield Ave., Bridgeport, Connecticut.

B. FINDINGS OF ESTABLISHED FACTS AND PRECLUSIONS OF EVIDENCE, WHICH WILL BECOME FINAL IF MR. JONES DOES NOT COMPLETE HIS DEPOSITION BY APRIL 15, 2022

In order to coerce Mr. Jones to attend his deposition, the Court should issue an order alerting Mr. Jones that it will order certain facts established and exclude certain evidence, and that these orders and will become permanent if Mr. Jones does not appear for deposition by April 15 at the offices of Koskoff, Koskoff & Bieder in Bridgeport, Connecticut.[6]

[6] Although we had previously accommodated Mr. Jones by agreeing to hold his deposition in Texas, he used that accommodation to waste counsel's time to his own advantage. If Mr. Jones is allowed to be deposed in Austin, there is nothing to stop him from doing that again – and absolutely no reason to believe any representation he may make to the contrary. Mr. Jones must be compelled to come to Connecticut for deposition. *See Sansone v. Haselden*, 1990 WL 271143 (Conn. Super. Ct. Apr. 18, 1990) (Berdon, J.) (court may exercise its discretion to order an out-of-state defendant to appear in Connecticut); *Antonios v. Farmers Ins.*, No. 117917, 1996 WL

Practice Book § 13-14, subsections (3) and (4) provide for the establishment of facts and the exclusion of evidence when a defendant engages in discovery misconduct:

> (3) The entry of an order that the matters regarding which the discovery was sought or other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
> (4) The entry of an order prohibiting the party who has failed to comply from introducing designated matters in evidence….

Prac. Bk. § 13-14.

If Mr. Jones does not sit for deposition, it will be necessary for the Court to find multiple facts established and to preclude Mr. Jones from offering a range of evidence. The most significant directed factual findings will concern Mr. Jones' subjective intent, including his motives for broadcasting lies about the plaintiffs and the Sandy Hook shooting, his intent to harm the targets of those lies, and his malicious subjective intent.[7] The Court would be required to concurrently preclude Mr. Jones from offering evidence contradicting those findings.

Ensuring these directed factual findings are appropriately framed will take more time than the Court has allotted under this briefing schedule, both because these findings and exclusions will be a dominant feature of the hearing in damages, if they become permanent, and because of the range of issues Mr Jones's deposition proposed to cover. The plaintiffs will

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92207 (Conn. Super. Ct. Feb. 15, 1996) (Pellegrino, J.); Prac. Bk. § 13-29(c)(2) (non-resident defendant "may be compelled" to give a deposition "at any place within thirty miles of the defendant's residence or within the county of his or her residence *or at such other place as is fixed by order of the judicial authority*.") (emphasis supplied). For the Court's convenience, unpublished Superior Court cases are attached in alphabetical order as Exhibit E.

[7] The imposition of such sanctions – which would effectively direct findings on punitive damages for the plaintiffs – is *not* what the plaintiffs want. What the plaintiffs want is for a jury to hear Mr. Jones's testimony and make its own determination of that issue, and for the Court then to make its own punitives findings based on that evidence. Nonetheless, such sanctions are the only path open to the plaintiffs and the Court at this point.

supplement this Motion with proposed findings of established fact, reserving the right to seek further findings of established fact as may be necessary. The plaintiffs request that the Court order those facts established and related evidence precluded, such order to be vacated if Mr. Jones purges his contempt by April 15.[8]

C. ESCALATING FINE

The plaintiffs request that the Court order a conditional fine, to be paid to the court clerks' office. The fine should increase as time passes. The plaintiffs request that the fine be set at $25,000 per day, beginning two days after the issuance of the Court's order on this Motion, and continuing for seven days thereafter; then escalating to $50,000 per day. The fine would be due every day until Mr. Jones completes his deposition, except that it should be suspended on the dates Mr. Jones is being deposed. As this fine is conditional, some or all of these amounts could be returned to Mr. Jones once he completes his deposition.[9]

For a coercive fine such as this, the consideration that informs the Court's exercise of its discretion is "the reasonableness of the amount of the coercion that the court deems necessary, keeping in mind the court's ultimate power to reduce the penalties once the contempt has been purged." *Papa* v. *New Haven Federation of Teachers*, 186 Conn. 725, 738 (1982). Applied to the

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[8] For an example of a case entering a conditional directed finding, *see Martucci v. Martucci*, 2011 WL 590736, at *5-6 (Conn. Super. Jan. 20, 2001) (Tierney, J.) (where defendant refused to provide tax returns, finding that the defendant's annual income was $896,835 and this amount would be "used by this court and future courts as the defendant's current annual income for all purposes," but that this order could be modified if the defendant produced the returns as ordered within a short time frame).

[9] An example of a case applying a graduated conditional fine, such as the one described above, is *Abandoned Angels Cocker Spaniel Rescue, Inc. v. Baity*, 2020 WL 6121354, at *3 (Conn. Super. Sept. 21, 2021) (Krumeich, JTR) (ordering conditional fines to be increased over time as long as non-compliance continued). An example of a case imposing a significant fine is *Papa v. New Haven Fed'n of Teachers,* 186 Conn. 725, 729 (1982), in which a $5,000 per day fine was imposed.

circumstances presently before the Court, the test requires the imposition of heavy fines. Lesser amounts are unlikely to cause Mr. Jones to appear.

The plaintiffs are also greatly prejudiced by every day that Mr. Jones delays his deposition – but the result he hopes for, a postponement of the trial date, would be equally prejudicial to the plaintiffs. For this reason, the initial fine amount should be substantial, should increase in significant increments, and should be required to be paid daily.

D. CONDITIONAL ORDER OF INCARCERATION

"In Connecticut, the court has the authority in civil contempt to impose on the contemnor either incarceration or a fine or both." *Woodbury Knoll, LLC v. Shipman & Goodwin, LLP*, 305 Conn. 750, 766 n.12 (2012). "Sanctions for civil contempt may be … imprisonment." *Financial Holdings, LLC v. Lyons,* 129 Conn. App. 380, 385 (2011). "[A] trial court has the power even to incarcerate contemnors in civil contempt cases until they purge themselves…." *Martocchio v. Savoir*, 130 Conn. App. 626, 631, *cert. denied*, 303 Conn. 901 (2011) (quoting *Johnson v. Johnson,* 111 Conn. App. 413, 427 (2008). The plaintiffs request that the Court order that Mr. Jones be taken into custody and incarcerated until his deposition is completed.

It is the plaintiffs' understanding that the Texas courts likely have the power to execute such an order. Tex. R. Civ. P. 201.2; *In re Seavall*, No. 03-13-00205-CV, 2013 WL 3013872, at *2 (Tex. App. June 11, 2013) ("[R]ule 201.2 authorizes Texas courts to enforce foreign discovery orders."); *see also Ex parte Durham*, 921 S.W.2d 482 (Tex. App. 1996) (Texas courts may hold a party in civil or criminal contempt for failure to comply with discovery orders.); *Ex parte Barnett*, 594 S.W.2d 805, 808 (Tex. Civ. App. 1980) ("there is no inherent or constitutional limitation on the power of a court to use its contempt power to enforce the orders of another court"); *see, e.g. Guercia v. Guercia*, 239 S.W.2d 169 (Tex. Civ. App. 1951) (under its equitable

powers, Texas court may use contempt to enforce order issued by Ohio court). Because the enforcement of such an order would take time, the plaintiffs request that the Court order incarceration in combination with other penalties.

E. ADDITIONAL ORDERS NECESSARY TO REMEDY PREJUDICE TO THE PLAINTIFFS

The plaintiffs further request that Mr. Jones is to pay to the plaintiffs' fees and costs incurred in connection with the deposition that Mr. Jones failed to attend, including, but not limited to time expended by plaintiffs' counsel and staff in the preparation, arrangement and travel to/from the deposition, lodging, transportation, and deposition costs associated with the court reporter, videographer and venue. The plaintiffs will compile these expenses and submit them to the Court as a supplemental filing.

The plaintiffs are still determining what scheduling accommodations their counsel may require due to the time wasted by Mr. Jones's willful refusal to attend his deposition. To the extent the plaintiffs require such accommodations, they should be granted without affording Mr. Jones any extension of the trial date.

III. CONCLUSION

As our Supreme Court recognized in *Rizzuto v. Davidson Ladders, Inc.*, 280 Conn. 225, 239-41 (2006), sanctions are a poor substitute for evidence, and the plaintiff who is awarded sanctions in lieu of evidence is often still prejudiced. *See id.* (stating that "most of [the 13-14] sanctions are of no use to a plaintiff who is unable to fulfill his or her burden of production as a result of a defendant's intentional spoliation of evidence"). There is no substitute for Mr. Jones's testimony under oath. The plaintiffs request that the Court issue any and all orders reasonably likely to coerce Mr. Jones to attend his deposition, including all the orders outlined above and any additional orders that the Court deems appropriate. The plaintiffs further request that the

Court make all orders necessary to remedy the prejudice caused by Mr. Jones's willful contempt.

THE PLAINTIFFS,

By: */s/ Alinor C. Sterling*
ALINOR C. STERLING
CHRISTOPHER M. MATTEI
MATTHEW S. BLUMENTHAL
KOSKOFF KOSKOFF & BIEDER
350 FAIRFIELD AVENUE
BRIDGEPORT, CT 06604
asterling@koskoff.com
cmattei@koskoff.com
mblumenthal@koskoff.com
Telephone: (203) 336-4421
Fax: (203) 368-3244
JURIS #32250

CERTIFICATION

I certify that a copy of the above was or will immediately be mailed or delivered electronically or nonelectronically on this date to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.

For Alex Emric Jones, Infowars, LLC, Free Speech Systems, LLC, Infowars Health, LLC and Prison Planet TV, LLC:
Norman A. Pattis, Esq.
Cameron Atkinson, Esq.
Pattis & Smith, LLC
383 Orange Street, First Floor
New Haven, CT 06511
P: 203-393-3017
npattis@pattisandsmith.com
catkinson@pattisandsmith.com

For Genesis Communications Network, Inc.
Mario Kenneth Cerame, Esq. (via USPS)
Brignole & Bush LLC
73 Wadsworth Street
Hartford, CT 06106
P: 860-527-9973

/s/ *Alinor C. Sterling*
ALINOR C. STERLING
CHRISTOPHER M. MATTEI
MATTHEW S. BLUMENTHAL

EXHIBIT A

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v.	:	AT WATERBURY, CONNECTICUT
ALEX EMRIC JONES, ET ALS.	:	MARCH 23, 2022

BEFORE THE HONORABLE BARBARA N. BELLIS, JUDGE

A P P E A R A N C E S :

Representing the Plaintiffs:
ATTORNEY CHRISTOPHER MATTEI
ATTORNEY MATTHEW BLUMENTHAL
ATTORNEY ALINOR STERLING
Koskoff Koskoff & Bieder
350 Fairfield Avenue
Bridgeport, CT 06604

Representing the Defendants, Alex Emric Jones; Infowars, LLC; Free Speech Systems, LLC; Infowars Health, LLC; Prison Planet TV, LLC:
ATTORNEY NORMAN PATTIS
ATTORNEY CAMERON ATKINSON
Pattis & Smith, LLC
383 Orange Street, #1
New Haven, CT 06511

Representing the Defendants, Genesis Communications Network, Inc.:
ATTORNEY MARIO CERAME
Brignole, Bush & Lewis
73 Wadsworth Street
Hartford, CT 06106

Recorded By:
Jocelyne Greguoli
Transcribed By:
Jocelyne Greguoli
Court Recording Monitor
400 Grand Street
Waterbury, Connecticut 06702

evidence to evaluate. I -- I will say that in my opinion, I was deceived yesterday, not intentionally by Attorney Smith and I made that clear yesterday, but I was deceived by the evidence and the argument Mr. Jones made about his need not to go to the deposition because he was remaining at home under Court (sic) supervision and I will say that only because Attorney Mattei pointed out that he was -- that Mr. Jones was broadcasting live the day before the hearing and the day of the hearing, did that -- that was the only way it would have ever come to the Court's attention, which is why I asked Attorney Smith for clarification.

So I simply cannot accept argument of counsel without credible, genuine, and reasonable proof and I don't have anything here. So are you looking for an opportunity to file, even ex parte, some medical record that you want the Court to consider?

ATTY. PATTIS: Yes. And may -- May -- If I can address the candor issue, Judge? I didn't mean to distract you. I got a re -- report of how the thing went when I was between flights last night and I don't think any lawyer wants to hear a suggestion that he or his partner were less than candid with the Court and Mr. Smith may have taken your words to heart. They were devastating to our firm and we began to evaluate whether we had conflicts because if

anticipate ruling?

THE COURT: I'm going -- I'm going -- I'm going to talk to Mr. Ferraro about how we're going to do this. I'm going to be reviewing everything at 3:30 and as soon as I -- you know, no later than five, I'll either be reviewing an in-camera document or not and Mr. Ferraro hopefully, I haven't spoken to him about this yet, but hopefully he can process the orders remotely from home tonight and he has everyone's email so he can email everyone the order as well so that you'll -- listen, I don't know how much you'll be filing. If it's 60 pages and I have to do significant research, it's going to be much later tonight, but if it's not that complicated an issue and the briefing isn't that tricky, then you'll get something earlier. If, for example, Attorney Pattis tells Mr. Ferraro at 4 o'clock I'm not going to submit anything or he has already submitted something by 4 o'clock, I may very well by 4:15 be able to enter the orders and -- and Mr. Ferraro will email you and will also get those orders processed so they'll be on the website.

But I will say this: Because there is no other evidence -- proper evidence before me and because I don't need briefing on the issue of whether he should appear for his deposition, I am going to order him to appear for his deposition tomorrow ordered as part of

the official court file, so that order will be in writing and it's also on the record now. And that -- Of course, if there is evidence that's submitted that persuades the Court that it would be dangerous to his health for him to attend the deposition, then that order may change, but right now, absent any amendment to the order, he is ordered to produce himself for the deposition tomorrow.

All right. Anything further from anyone at this point?

ATTY. PATTIS: Nothing.

ATTY. MATTEI: Nothing. Thank you.

ATTY. CERAME: No, Your Honor.

THE COURT: All right. Thank you. We're adjourned.

(The matter concluded.)

* * *

UWY-X06-CV18-6046436-S	:	SUPERIOR COURT
ERICA LAFFERTY, ET ALS.,	:	COMPLEX LITIGATION
v.	:	AT WATERBURY, CONNECTICUT
ALEX EMRIC JONES, ET ALS.	:	MARCH 23, 2022
UWY-X06-CV18-6046437-S	:	SUPERIOR COURT
WILLIAM SHERLACH, ET AL.,	:	COMPLEX LITIGATION
v.	:	AT WATERBURY, CONNECTICUT
ALEX EMRIC JONES, ET ALS.	:	MARCH 23, 2022
UWY-X06-CV18-6046438-S	:	SUPERIOR COURT
WILLIAM SHERLACH, ET AL.,	:	COMPLEX LITIGATION
v.	:	AT WATERBURY, CONNECTICUT
ALEX EMRIC JONES, ET ALS.	:	MARCH 23, 2022

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Waterbury at Waterbury, Connecticut, before the Honorable Barbara N. Bellis, Judge, on the 23rd day of March, 2022.

Dated this 24th day of March, 2022 in Waterbury, Connecticut.

Jocelyne Greguoli
Court Recording Monitor

EXHIBIT B

NO. X06-UWY-CV-18-6046436-S	**:**	**SUPERIOR COURT**
ERICA LAFFERTY, ET AL.	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL.	**:**	**MARCH 11, 2022**

NO. X06-UWY-CV-18-6046437-S	**:**	**SUPERIOR COURT**
WILLIAM SHERLACH	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL.	**:**	**MARCH 11, 2022**

NO. X06-UWY-CV-18-6046438-S	**:**	**SUPERIOR COURT**
WILLIAM SHERLACH, ET AL.	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL.	**:**	**MARCH 11, 2022**

RE-NOTICE OF VIDEOTAPED DEPOSITION

PLEASE TAKE NOTICE that the Plaintiffs in the above-captioned matter will take the videotaped deposition of **ALEX EMRIC JONES** on **Wedsnday, March 23, 2022 at 10:00 a.m**. **Eastern Time (9:00 a.m. Central Time) and continuing to Thursday, March 24, 2022** and until such deposition is complete, to be held in the Tesla Fiber Room at the offices of fibercove, 1700 South Lamar Boulevard, Suite 338, Austin, TX 78704, with remote videoconference available for participating counsel, before a notary public or other competent authority. The Plaintiffs also request that **ALEX EMRIC JONES** produce the items, documents, and information described in the Schedule A attached hereto.

THE PLAINTIFFS,

By /**s**/ *Christopher M. Mattei, Esq.*

CHRISTOPHER M. MATTEI
ALINOR C. STERLING
MATTHEW S. BLUMENTHAL
KOSKOFF KOSKOFF & BIEDER
350 FAIRFIELD AVENUE
BRIDGEPORT, CT 06604
cmattei@koskoff.com
asterling@koskoff.com
mblumenthal@koskoff.com
Telephone: (203) 336-4421
Fax: (203) 368-3244
JURIS #32250

CERTIFICATION

This is to certify that a copy of the foregoing has been emailed and/or mailed on this day to all counsel and *pro se* appearances as follows:

For Alex Emric Jones, Infowars, LLC, Free Speech Systems, LLC, Infowars Health, LLC and Prison Planet TV, LLC:
Norman A. Pattis, Esq.
Cameron Atkinson, Esq.
Pattis & Smith, LLC
383 Orange Street, First Floor
New Haven, CT 06511
P: 203-393-3017
npattis@pattisandsmith.com
catkinson@pattisandsmith.com

For Genesis Communications Network, Inc.
Mario Kenneth Cerame, Esq.
Brignole & Bush LLC
73 Wadsworth Street
Hartford, CT 06106
P: 860-527-9973
mcerame@brignole.com

/s/ *Christopher M. Mattei, Esq.*
CHRISTOPHER M. MATTEI
ALINOR C. STERLING
MATTHEW S. BLUMENTHAL

Schedule A

Definitions

Please be advised that these Requests for Production use and incorporate the definitions set forth in Conn. Practice Book § 13-1.

In addition, for the purposes of these Requests for Production only,

"Sandy Hook Shooting" is defined as: the shooting that took place at Sandy Hook Elementary School in the town of Newtown, Connecticut on December 14, 2012.

"The plaintiffs in this lawsuit" is defined as: Jacqueline Barden, Mark Barden, Nicole Hockley, Ian Hockley, Francine Wheeler, David Wheeler, Jennifer Hensel, Jeremy Richman, Donna Soto, Carlee Soto-Parisi, Carlos M. Soto, Jillian Soto, Erica Lafferty, William Sherlach, and Robert Parker.

"Sandy Hook Hoax Theory" is defined as: Any theory that the Sandy Hook Shooting did not happen as is generally accepted, including that it was a government conspiracy, scripted, included so-called "crisis actors," that the Sandy Hook Victims did not die, and bases for such theories.

"This Lawsuit" is defined as: *Erica Lafferty, et al v. Alex Jones, et al*, UWY-CV18-6046436-S; *William Sherlach v. Alex Jones, et al*, UWY-CV18-6046437-S, and *William Sherlach, et al v. Jones, et al*, UWY-CV18-6046438-S.

"**The Texas Lawsuits**" is defined as: Neil Heslin v. Alex E. Jones, et al, Cause No. D-1-GN-18-001835; Leonard Pozner and Veroniqe de la Rosa v. Alex E. Jones, et al, Cause No. D-1-GN-18-001842; Scarlett Lewis v. Alex E. Jones, et al, Cause No. D-1-GN-18-006623, Marcel Fontaine v. Alex E. Jones, et al, Cause No. D-1-GN-18-001605; Brennan M. Gilmore v. Alexander E. Jones, et al., Case No. 18-00017 (D. W.Va.).

Unless otherwise specified, the time frame for these discovery requests is **December 14, 2012 through and including March 23, 2022**.

Schedule A

1. Any and all non-privileged documents and communications concerning any information that the deponent relied upon and/or referenced in connection with any on-air statement he made concerning the Sandy Hook Shooting, the Sandy Hook Hoax Theory, and/or the plaintiffs in this lawsuit.

a. Any and all non-privileged documents and communications concerning the source(s) of any such information.

2. Any and all non-privileged communications to or from Wolfgang Halbig, including letters, memoranda, emails, text messages, sms messages, instant messages sent and/or received over any social media platform, or other electronic communications;

3. Any and all non-privileged communications to or from Daniel Bidondi, including letters, memoranda, emails, text messages, sms messages, instant messages sent and/or received over any social media platform, or other electronic communications;

4. Any and all non-privileged communications to or from Joseph Rogan, including letters, memoranda, emails, text messages, sms messages, instant messages sent and/or received over any social media platform, or other electronic communications, concerning the Sandy Hook Shooting, the Sandy Hook Hoax Theory, the plaintiffs in this lawsuit, and/or any appearance by the deponent on the Joe Rogan Experience podcast.

5. Any and all non-privileged communications to or from David Jones, Robert Dew, Melinda Flores, Lydia Zapata-Hernandez, Anthony Gucciardi, Adan Salazar, Nico Acosta, Cristopher Daniels, Timothy Fruge, Blake Roddy, Louis Sertucche, Buckley Hamman, Michael Zimmerman and/or Owen Shroyer, including letters, memoranda, emails, text messages, sms messages, instant messages sent and/or received over any social media platform, or other electronic communications concerning this Lawsuit and/or the Texas Lawsuits.

Schedule A

6. Any and all contracts, memoranda of understanding, agreements, certificates of debt, and/or notes concerning the relationship between any of the following entities: Free Speech Systems, LLC; PQPR Holdings Limited, LLC; JLJR Holdings, LLC; PLJR Holdings, LLC.

7. Any and all contracts, memoranda of understanding and agreements between the deponent and Youngevity International Corporation or any subsidiary thereof.

8. For the period November 2016 through the present, any and all transcripts of any program aired on Infowars.com, including closed captioning transcripts, in which the terms "Sandy Hook" or "Newtown" appear.

9. Documents sufficient to identify every cellular telephone number utilized by you from December 14, 2012 through February 23, 2022.

10. Complete transaction histories, including, but not limited to, dates, amounts, input/output addresses, fees, and transaction numbers, from any cryptocurrency excanges, investment firms, brokeratges, and/or cryptocurrency management software, including virtual wallet software, mobill applications, desktop applications, and/or web-based systems.

11. Records of deposits of cryptocurrency into fiat currency, including, but not limited to, method of exchange, location of exchange, dates, amounts, and input/output addresses, transaction numbers, and fees paid.

EXHIBIT C

NO. X06-UWY-CV-18-6046436-S	:	SUPERIOR COURT
ERICA LAFFERTY, ET AL.	:	COMPLEX LITIGATION DOCKET
V.	:	AT WATERBURY
ALEX EMRIC JONES, ET AL	:	

NO. X06-UWY-CV-18-6046437-S	:	SUPERIOR COURT
WILLIAM SHERLACH	:	COMPLEX LITIGATION DOCKET
V.	:	AT WATERBURY
ALEX EMRIC JONES, ET AL	:	

NO. X06-UWY-CV-18-6046438-S	:	SUPERIOR COURT
WILLIAM SHERLACH, ET AL.	:	COMPLEX LITIGATION DOCKET
V.	:	AT WATERBURY
ALEX EMRIC JONES, ET AL	:	

CERTIFICATE OF NONAPPEARANCE
FOR THE ORAL DEPOSITION OF ALEX EMRIC JONES
MARCH 23, 2022

I, Gabriela Silva, Certified Shorthand Reporter in and for the State of Texas, certify:

That I appeared at Homewood Suites by Hilton Austin South, 4143 Governor's Row, Board Room, Austin, Texas on the 23rd day of March, 2022, to report the oral deposition of ALEX EMRIC JONES, pursuant to the attached Memorandum, scheduled for 9:00 a.m.

That at 9:03 a.m., the witness was not present. Present for the deposition in-person were CHRISTOPHER M. MATTEI, MATTHEW S. BLUMENTHAL, and via Zoom were ALINOR C. STERLING and COLIN ANTAYA, Attorneys for Plaintiffs; NORMAN PATTIS, Attorney for Defendants; and via Zoom, MARIO KENNETH CERAME, Attorney for Genesis Communications Network, Inc.

A P P E A R A N C E S:

ATTORNEYS FOR THE PLAINTIFFS:
KOSKOFF KOSKOFF & BIEDER, PC
350 Fairfield Avenue, Suite 501
Bridgeport, CT 06604
Tel: 203-336-4421
E-mail: asterling@koskoff.com
cmattei@koskoff.com
mblumenthal@koskoff.com
CHRISTOPHER M. MATTEI, ESQ.
ALINOR C. STERLING, ESQ. (Appearing remotely)
MATT BLUMENTHAL, ESQ.
COLIN ANTAYA, ESQ. (Appearing remotely)

ATTORNEYS FOR THE DEFENDANTS:
FOR ALEX EMRIC JONES, INFOWARS, LLC, FREE SPEECH SYSTEMS, LLC, INFOWARS HEALTH, LLC and PRISON PLANET TV, LLC:
PATTIS & SMITH, LLC
383 Orange Street, First Floor
New Haven, CT 06511
Tel: 203-393-3017
E-mail: npattis@pattisandsmith.com
NORMAN A. PATTIS, ESQ.

FOR GENESIS COMMUNICATIONS NETWORK, INC.:
BRIGNOLE, BUSH & LEWIS
73 Wadsworth Street
Hartford, CT 06106
Tel: 860-527-9973
E-mail: mcerame@brignole.com
MARIO CERAME, ESQ. (Appearing remotely)

motion -- an objection to the request for production which Judge Bellis overruled except as to the last two items in Schedule A.

Earlier this week, Mr. Jones filed a Motion for a Protective Order seeking permission from the Court not to appear for his deposition. That Motion for Protective Order was opposed by my office by written memorandum and Judge Bellis held a hearing on the Motion for Protective Order yesterday at which time she granted Mr. Jones' request to submit a ex parte for in-camera review a letter purporting to be from a physician.

Judge Bellis reviewed that letter and concluded that there was no credible evidence that was submitted by Mr. Jones upon which she could find that he had met his burden for the issuance of a protective order and ordered Mr. Jones to appear here for a deposition this morning. I confirmed with Counsel yesterday the time and location of the deposition. I had conversation with Counsel last night and then this morning.

I am informed by Counsel that Mr. Jones does not intend to appear for his deposition today, and I'll let Counsel put on the record anything he sees fit to put on. My intention is for us to remain on the record and -- at least for a reasonable period of time in the

becomes necessary or seeks counsel himself, I can't say.

That's not my place to advise him. But as to remaining here, I'll remain as long as Attorney Mattei likes, but I think it is abundantly clear to me that Mr. Jones has no intention to appear here today regardless of how long we sit.

MR. MATTEI: Attorney Cerame, is there anything you'd like to add at this point?

MR. CERAME: Sorry. Did you say Cerame? It sounded a little blocked.

MR. MATTEI: Mario, yes. Attorney Cerame?

MR. CERAME: Yes. I mean, as much as I know me as and as much as I think was yesterday where I think Chris looked at the streaming -- I could see, but I imagine it was prerecorded. Recorded -- imagine -- that's all I wanted to add.

COURT REPORTER: I can't hear him at all.

MR. MATTEI: Yeah. I -- the court reporter, Attorney Cerame, was having difficulty hearing you. Let me see if I can summarize what you said and you can tell me whether it was accurate or not.

I believe what Attorney Cerame indicated was that he reviewed some of what he believes to have been the footage from Mr. Jones' show yesterday and was relaying that at least some of it was prerecorded. Is

CERTIFICATE

I further certify that I am neither employed nor related to any attorney or party in this matter and have no interest, financial or otherwise, in its outcome.

The cost of the Certificate of Nonappearance is $_____.

Given under my hand and seal of office on this 23rd day of March, 2022.

Gabriela S. Silva, Texas CSR, RPR, CRR, RMR
Expiration Date: 01-31-23
U.S. Legal Support
Firm Registration No.: 342
363 North Sam Houston Parkway E
Suite 1200
Houston, Texas 77060
(361) 883-1716

EXHIBIT D

NO. X06-UWY-CV-18-6046436-S	:	SUPERIOR COURT
ERICA LAFFERTY, ET AL.	:	COMPLEX LITIGATION DOCKET
V.	:	AT WATERBURY
ALEX EMRIC JONES, ET AL		

NO. X06-UWY-CV-18-6046437-S	:	SUPERIOR COURT
WILLIAM SHERLACH	:	COMPLEX LITIGATION DOCKET
V.	:	AT WATERBURY
ALEX EMRIC JONES, ET AL		

NO. X06-UWY-CV-18-6046438-S	:	SUPERIOR COURT
WILLIAM SHERLACH, ET AL.	:	COMPLEX LITIGATION DOCKET
V.	:	AT WATERBURY
ALEX EMRIC JONES, ET AL		

CERTIFICATE OF NONAPPEARANCE
FOR THE ORAL DEPOSITION OF ALEX EMRIC JONES
MARCH 24, 2022

I, Gabriela Silva, Certified Shorthand Reporter in and for the State of Texas, certify:

That I appeared at Homewood Suites by Hilton Austin South, 4143 Governor's Row, Board Room, Austin, Texas on the 24th day of March, 2022, to report the oral deposition of ALEX EMRIC JONES, pursuant to the attached Memorandum, scheduled for 9:00 a.m.

That at 9:01 a.m., the witness was not present. Present for the deposition in-person were CHRISTOPHER M. MATTEI, MATTHEW S. BLUMENTHAL, Attorneys for Plaintiffs; NORMAN PATTIS, Attorney for Defendants; and via Zoom, MARIO KENNETH CERAME, Attorney for Genesis Communications Network, Inc.

A P P E A R A N C E S:

ATTORNEYS FOR THE PLAINTIFFS:
KOSKOFF KOSKOFF & BIEDER, PC
350 Fairfield Avenue, Suite 501
Bridgeport, CT 06604
Tel: 203-336-4421
E-mail: mblumenthal@koskoff.com
cmattei@koskoff.com

CHRISTOPHER M. MATTEI, ESQ.
MATT BLUMENTHAL, ESQ.

ATTORNEYS FOR THE DEFENDANTS:
FOR ALEX EMRIC JONES, INFOWARS, LLC, FREE SPEECH SYSTEMS, LLC, INFOWARS HEALTH, LLC and PRISON PLANET TV, LLC:
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Tel: 203-393-3017
E-mail: npattis@pattisandsmith.com
NORMAN A. PATTIS, ESQ.

FOR GENESIS COMMUNICATIONS NETWORK, INC.:
BRIGNOLE, BUSH & LEWIS
73 Wadsworth Street
Hartford, CT 06106
Tel: 860-527-9973
E-mail: mcerame@brignole.com

MARIO CERAME, ESQ. (Appearing remotely)

P R O C E E D I N G S

(On the record at 9:01 a.m.)

MR. MATTEI: This is Chris Mattei on behalf of the plaintiffs in the matter of Lafferty, et al and the companion cases against Alex Jones and additional defendants. We're here on Friday (sic), March 24th.

MR. PATTIS: Thursday.

MR. MATTEI: I'm sorry, Thursday, thank you, March 24th. It's 9:02 a.m. Central for the deposition of Alex Jones. Mr. Jones was originally scheduled to appear yesterday. He did not appear. Mr. Jones subsequently filed an amended Motion for Protective Order seeking to be excused from his appearance here today.

The Court denied that motion at docket 744.10 yesterday evening. So we are gathered here for Mr. Jones' deposition. He has not appeared yet again. I understand from Attorney Pattis, who will make remarks after me, that Mr. Jones is not going to appear today. And so after Attorney Pattis makes any comments he wishes to make, Attorney Cerame makes any comments he wishes to make I don't think that we'll need to stay as we did yesterday to see if he arrives, but I'll attest

are pending to assess his status. And I redacted the type of status that is.

I have asked him to avoid too much stress until we get the results from the blood tests this morning. I also gave him ER precautions if he develops escalating systems. And then the doctor concludes, As a result of these findings, I am advising him not to attend court proceedings for now.

You know, I -- it's my understanding that pending the results of these certain tests, he may or may not be hospitalized today, but Mr. Jones is not -- is mindful of the Court's order, but feels very much in the position of -- and taking by that name, he's got conflicting imperatives and he's choosing to adhere to the voice of his physician who has his physical welfare, health and life in her hands.

So I offer plaintiff's exhibit -- or excuse me -- Defendants' Exhibit 1, the affidavit of Dr. Benjamin Marble who we discussed in our pleadings yesterday and Jones Exhibit Number 2, the letter notarized from Dr. Amy Offutt as exhibits to this deposition.

(Exhibit Numbers 1 and 2 were marked.)

MR. PATTIS: And I can confirm after speaking with Mr. Jones moments before we went on the record that

he will not be appearing here today. And I join Mr. Mattei in closing -- in the request to close the deposition on futility grounds.

MR. MATTEI: Attorney Cerame?

MR. CERAME: I have nothing more to offer.

MR. MATTEI: Okay. I would just ask that Attorney Pattis and I, prior to going on the record, had a conversation about scheduling in this case of additional depositions. We had anticipated after the deposition of Brittany Paz, the need for a short extension of the fact discovery deadline in order to accommodate the remainder of her deposition along with the depositions that had previously been kept open, Owen Shroyer, Kit Daniels and Josh Owens.

In light of the circumstances surrounding Mr. Jones' deposition, from the plaintiff's perspective at least, additional time will be required to secure his testimony or at least for us to attempt to secure his testimony. And in addition, Rob Dew, who had agreed through Counsel to appear for deposition tomorrow, has been, as I understand it, in conversation with Counsel, for a new date in light of the inability of the plaintiffs to take Mr. Jones' deposition this week, which is a circumstance we were counting on at the time we had agreed to take Mr. Dew's deposition tomorrow.

CERTIFICATE

I further certify that I am neither employed nor related to any attorney or party in this matter and have no interest, financial or otherwise, in its outcome.

The cost of the Certificate of Nonappearance is $_____.

Given under my hand and seal of office on this 24th day of March, 2022.

_____

Gabriela S. Silva, Texas CSR, RPR, CRR, RMR

Expiration Date: 01-31-23

U.S. Legal Support

Firm Registration No.: 342

363 North Sam Houston Parkway E

Suite 1200

Houston, Texas 77060

(361) 883-1716

EXHIBIT E

2020 WL 6121354
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of Stamford-Norwalk at Stamford.

ABANDONED ANGELS COCKER SPANIEL RESCUE, INC.

v.

Cheryl BAITY

FSTCV195021251S
|
September 21, 2020

Opinion

Krumeich, J.T.R.

***1** Abandoned Cocker Spaniel Rescue, Inc. has moved to hold Cheryl Baity ("Baity") in contempt for failure to turn over the subject dog named Lambsy pursuant to Judge Tobin's judgment of replevin filed on December 12, 2019 that "defendant is ordered to return Lambsy to the plaintiff within thirty days ..." Baity appealed and moved to stay the order pending appeal. Plaintiff moved to terminate the stay of execution. By order filed on March 6, 2020, Judge Tobin terminated the stay of execution.[1] Baity has failed to return Lambsy to plaintiff.

In *Town of Wethersfield v. PR Arrow, LLC,* 187 Conn.App. 604, 652 (2019), the Appellate Court recently reaffirmed the factors a court must consider in finding a party in civil contempt:

> "The court has an array of tools available to it to enforce its orders, the most prominent being its contempt power: ... Our law recognizes two broad types of contempt: criminal and civil ... Civil contempt ... is not punitive in nature but intended to coerce future compliance with a court order, and the contemnor should be able to obtain release from the sanction imposed by the court by compliance with the judicial decree ... A civil contempt finding thus permits the court to coerce compliance by imposing a conditional penalty, often in the form of a fine or period of imprisonment, to be lifted if the noncompliant party chooses to obey the court."
>
> "To impose contempt penalties ... the trial court must make a contempt finding, and this requires the court to find that the offending party willfully violated the court's order; failure to comply with an order, alone, will not support a finding of contempt ... Rather, to constitute contempt, a party's conduct must be willful ... Whether a party's violation was willful depends on the circumstances of the particular case and, ultimately, is a factual question committed to the sound discretion of the trial court ... Without a finding of willfulness, a trial court cannot find contempt and, it follows, cannot impose contempt penalties." (Citations omitted.)

The Supreme Court in *Puff v. Puff,* 334 Conn. 341, 364-65 (2020), recently reiterated the shifting burdens imposed on the parties in a contempt proceeding based on disobedience of a court order:

> "Contempt is a disobedience to the rules and orders of a court which has power to punish for such an offense." ... ("[c]ourts have inherent power to coerce compliance -with their orders through appropriate sanctions for contemptuous disobedience of them"). The present case involves allegations of indirect civic contempt. "A refusal to comply with an injunctive decree is an indirect contempt of court because it occurs outside the presence of the trial court." ...
>
> "[C]ivil contempt is committed when a person violates an order of court which requires that person in specific and definite language to do or refrain from doing an act or series of acts." ... (civil contempt may be founded only on clear and unambiguous court order). In part because the contempt remedy is
>
> ***2** "particularly harsh" ... "such punishment should not rest upon implication or conjecture, [and] the language [of the court order] declaring ... rights should be clear, or imposing burdens [should be] specific and unequivocal, so that the parties may not be misled thereby." ...
>
> To constitute contempt, it is not enough that a party has merely violated a court order; the violation must be willful ... "The inability of a party to obey an order of the court; without fault on his part, is a good defense to the charge of contempt ..."

> It is the burden of the party seeking an order of contempt to prove, by clear and convincing evidence, both a clear and unambiguous directive to the alleged contemnor and the alleged contemnor's willful noncompliance with that directive ... If the moving party establishes this twofold prima facie case, the burden of production shifts to the alleged contemnor to provide evidence in support of the defense of an inability to comply with the court order. (Citations omitted.)

"A good faith dispute or legitimate misunderstanding about the mandates of an order may well preclude a finding of willfulness." *Chang v. Chang,* 197 Conn.App. 733, 737 (2020), quoting *Hall v. Hall,* 182 Conn.App. 736, 747 (2018) aff'd 2020 WL 1856087 *8 (2020). The replevin order here was crystal clear: Baity was required to return Lambsy within the designated period. Baity's efforts to stave off execution of the judgment by a motion to stay the order and for various continuances and postjudgment motions were unavailing. Plaintiff has proven by clear and convincing evidence that the replevin order was unambiguous and Baity's failure to obey was a willful violation of the order.

The burden shifted to Baity to produce evidence in support of her defense of inability to comply with the court order. "The inability of the defendant to obey an order of the court, without fault on his part, is a good defense to a charge of contempt." *Tobey v. Tobey,* 165 Conn. 742, 746 (1974). Baity has presented insufficient evidence of her inability to comply with the replevin order. See *Johnson v. Johnson,* 111 Conn.App. 413, 421-22 (2008). The Court does not find credible Baity's testimony that she is unable to return the dog because her mother has bonded with Lambsy but rather finds that keeping Lambsy in New Hampshire is part of Baity's strategy to evade the jurisdiction of this Court to decide replevin of the subject dog and that Baity is at fault for creating the situation she now claims renders her unable to return the dog.[2] Based on the credible evidence presented at the hearing the Court finds that Baity parked Lambsy at her mother's house in New Hampshire as a temporary expedient at the onset of this litigation because of adverse publicity relating to this case and community outrage; Baity later kept the dog there after losing the trial during the pendency of the appeal as a strategy to avoid compliance with the replevin order.[3] "A party to a court proceeding must obey the court's orders unless and until they are modified or rescinded, and may not engage in 'self-help' by disobeying a court order to achieve the party's desired end." *Hall,* 2020 WL 1856087 *8. "Disagreement with a court does not justify disobeying its orders. If it did, savvy litigants would immediately ignore the courts en masse and the wheels of justice would screech to a halt. 'An order of the court must be obeyed until it has been modified or successfully challenged.' " *Christophersen v. Christophersen,* 2014 WL 1814190 *3 (Conn.Super. 2014) (Gilardi, J.), quoting *Fox v. Fox,* 147 Conn.App. 44, 49 (2013).[4] Replevin orders under C.G.S. § 52-515 that are violated willfully, as here, appropriately may be enforced by a contempt order designed to coerce compliance. *Id.*

***3** Having found Baity in contempt for willful failure to obey the replevin order, the Court must now determine the sanction to impose. "Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained." *DeMartino v. Monroe Little League,* 192 Conn. 271, 278 (1984) (citation omitted). Plaintiff has not requested compensation and has not submitted evidence of actual loss necessary to obtain a compensatory sanction. See e.g., *Welsh v. Martinez,* 191 Conn.App. 862, 880-81 (2019).[5] The Court therefore will impose a fine of fifteen dollars ($15.00) per day payable to the court clerk's office commencing on the thirtieth day after entry of this order to coerce compliance with the replevin order. If Baity has not complied with the replevin order and for so long as Baity remains non-compliant, on the 90th day after entry of this order the fine will increase to twenty-five dollars ($25.00) per day and on the 120th day will increase to fifty ($50.00) per day.

All Citations

Not Reported in Atl. Rptr., 2020 WL 6121354

Footnotes

1 In terminating the stay Judge Tobin observed: "defendant's course of action throughout this [case] has shown a pattern that is one of delay."

2 The Court rejects Baity's argument that it lacks jurisdiction over Baity because the dog resides in New Hampshire. The Court has jurisdiction over Baity to enforce its orders. See *CFM of Connecticut Inc. v. Chowdhury,* 239 Conn. 375, 384 (1996).

3 That Lambsy may be leading an idyllic life in New Hampshire with Baity's mother and two other dogs is irrelevant to this proceeding. Compare, *Angave v. Oates,* 90 Conn.App. 427, 430 n.3 (2005); *Animals R Family, Inc. v. Sunrise Assisted Living of Stamford,* 2019 WL 3526443 *2 (Conn.Sup. 2019) [68 Conn. L. Rptr. 827] (Kavanewsky, J.).

4 A contempt motion is not an occasion to re-litigate the underlying order. See *Trufano v. Trufano,* 18 Conn.App. 119, 124 (1989) ("[a] contempt proceeding does not open to reconsideration the legal or factual basis of the order alleged to have been disobeyed and thus become a retrial of the original controversy").

5 Plaintiff indicated in its brief it may seek counsel fees in the future if Baity continues to be noncompliant with the replevin order.

1996 WL 92207

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut.

Mark ANTONIOS

v.

FARMERS INSURANCE.

No. 117917.

Feb. 15, 1996.

MEMORADUM OF DECISION

PELLEGRINO, Judge.

***1** Judge (with first initial, no space for Sullivan, Dorsey, and Walsh): Pellegrino

Opinion Title:MEMORANDUM OF DECISION RE: MOTION FOR PROTECTIVE ORDER (# 124)

On November 15, 1993, the plaintiff, Mark Antonios, filed a single count complaint against the defendant, Farmers Insurance Exchange, seeking uninsured motorist benefits for damages allegedly sustained as a result of an automobile accident that occurred in the state of California. The complaint alleges that the terms of the policy issued by the defendant provide for arbitration of uninsured motorist claims in the county and state of residence of the insured. The complaint further alleges that a demand was made against the defendant and that it has refused to compensate the plaintiff. The plaintiff seeks money damages and an order compelling the defendant to submit to arbitration.

On January 25, 1995, the defendant filed a motion for summary judgment, accompanied by the affidavit of its senior claims representative, Carol L. Nelson. Thereafter, the plaintiff served Nelson with a notice of deposition which directed the defendant to appear in Waterbury for deposition. On July 27, 1994, the defendant filed the operative motion seeking an order that the deposition instead occur in Dublin, Ohio, the state and county of its residence. In response, the plaintiff filed an objection and motion to compel deposition. On August 8, 1995, this court denied the motion for protective order.

On August 21, 1995, the defendant filed a motion to reargue the motion for protective order. The court granted the motion on August 30, 1995, and oral argument was heard on October 30, 1995.

"Any party may be compelled by notice to give a deposition." *Pavlinko v. YaleNew Haven Hospital,* 192 Conn. 138, 143, 470 A.2d 246 (1984); Practice Book § 246. Practice Book § 246 also describes the various locations where depositions may be held and provides in relevant part:

(c) A defendant who is not a resident of this state may be compelled: ...

(2) By notice under Sec. 244(a) to give a deposition at any place within 30 miles of the defendant's residence or within the county of his residence or in *such other place as is fixed by order of the court* ...

(e) In this section, the terms "plaintiff" and "defendant" include officers, directors and managing agents of corporate plaintiffs and corporate defendants or other persons designated under Sec 244(g) as appropriate ...

(Emphasis added.) At the same time, Practice Book § 221 provides in relevant part that "upon motion by a party from whom discovery is sought, and for good cause shown, the court may make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense ..." "In ruling on a protective order, the court has discretion." *Gomes v. Judd & Puffer,* Superior Court, judicial district of Waterbury, Docket No. 75024 (November 26, 1986) (O'Brien, J., 2 CSCR 64).

***2** Although "a nonresident defendant may usually insist that his deposition be taken only where he resides or does business, these rules have sometimes been relaxed to accommodate special circumstances of the parties." *Kostek v. 477 Corp.,* 30 Conn.Sup. 334, 336, 316 A.2d 423 (1974). "No hard rule should be set down to govern when the court should exercise its discretion to order an out-ofstate defendant to appear in Connecticut or some other place not specifically provided for in 246(c) for a deposition. The court in exercising its discretion must do so in a manner which accommodates the special circumstances of each case." *Sassone v. Hasseldon,* Superior Court, judicial district of New Haven at New Haven, Docket No. 291167 (April 18, 1990) (Berdon, J., 1 Conn.

L. Rptr. 520). In *Sassone,* the court offered the following analytical framework:

Some of the factors [the court] should consider are the financial circumstances of the parties, whether the plaintiff seeking to take the deposition of the out-of-state defendant offers to pay his or her travel and living expenses, whether the defendant was personally served in Connecticut with the writ and complaint while he or she was a resident and thereafter voluntarily moved out of Connecticut, the hardship that travel may impose on a party, the availability of counsel being able to promptly resolve disputes which require a judicial determination if the deposition is taken in the forum, the effectiveness of obtaining the discovery through other means such as written interrogatories or the taking of the defendant's deposition in Connecticut at the commencement of trial, and such other considerations.

Id.

In *Gomes v. Judd & Puffer, supra,* the defendant insurance company moved for a protective order to prevent the plaintiff from requiring its claims adjustor to travel to Connecticut for a deposition. The court, first noting its discretion in the matter, concluded that the status of the deponent as a claims adjustor for the defendant justified holding the deposition in Connecticut. *Id.* In the instant matter, the defendant has chosen this forum to litigate this claim. It is not unreasonable that it should bear the expense of making an employee of its available for a deposition in the forum that it has chosen, especially in view of the fact that it has submitted an affidavit signed by that employee to this court. The court therefore shall deny the defendant's motion for protective order.

All Citations

Not Reported in A.2d, 1996 WL 92207, 16 Conn. L. Rptr. 208

End of Document

2013 WL 3013872
Only the Westlaw citation is currently available.

SEE TX R RAP RULE 47.2 FOR
DESIGNATION AND SIGNING OF OPINIONS.

MEMORANDUM OPINION
Court of Appeals of Texas,
Austin.

In re Stephen J. SEAVALL.

No. 03–13–00205–CV.
|
June 11, 2013.

Original Proceeding from Travis County.

Attorneys and Law Firms

Jeffrey Scott Lowenstein, Dallas, TX, for real party in interest.

George Frederick May, Twomey May PLLC, Houston, TX, for relator.

Jeffery B. Kaiser, Kaiser PC, Houston, TX, for relator.

Benjamin L. Riemer, Dallas, TX, for real party in interest.

Before Justices PURYEAR, PEMBERTON and ROSE.

MEMORANDUM OPINION

DAVID PURYEAR, Justice.

***1** Relator Stephen J. Seavall filed a petition for writ of mandamus attacking the trial court's order requiring him to submit to a deposition and respond to discovery requests made by real party in interest The Cadle Company. Because we agree that the underlying judgment is dormant and cannot be acted upon in Texas, we conditionally grant mandamus relief.

In 1987, Seavall entered into an agreed judgment with Sandia Federal Savings and Loan Association, agreeing to pay $30,000 plus costs, interest, and attorney's fees, for a total of $36,388.12. That judgment was signed by the Second Judicial District Court in New Mexico on July 2, 1987. In 1994, the judgment was acquired by Premier Financial Services, and Premier attempted to domesticate the judgment in Texas in 1997. Seavall responded that limitations had run on the judgment, and Premier non-suited its attempted enforcement action. Cadle later acquired the judgment, and on June 24, 2002, the New Mexico court signed a judgment that essentially extended the 1987 judgment, awarding Cadle $91,504.62. In September 2002, Cadle filed another action in Texas to domesticate the June 2002 judgment, but dismissed it when it "determined the deadline to domesticate the [June 2002] New Mexico Judgment had lapsed." In November 2012, Cadle obtained a Commission, signed by the New Mexico court, that stated that Texas courts should enforce New Mexico's laws and require Seavall to submit to a deposition and produce documents as requested in Cadle's discovery request related to the earlier judgments. Cadle then filed in Travis County a "petition for miscellaneous action for application for discovery," relying on the New Mexico Commission and asking the trial court to require Seavall to submit to a deposition and to answer Cadle's request for production. Seavall filed a motion to quash. The trial court held a hearing on the matter and on March 4, 2013, signed an order denying Seavall's motion to quash, granting Cadle's motion to compel Seavall's deposition, and requiring Seavall to respond to Cadle's requests for production.

In his petition for writ of mandamus, Seavall argues that the trial court abused its discretion in allowing Cadle to maintain an action for post-judgment discovery because the underlying judgment is unenforceable and time-barred under Texas law. We agree.

There is no authority for an appeal from an order related to post-judgment discovery, and generally the only means of reviewing such an order is through mandamus. *See Bahar v. Lyon Fin. Servs.*, 330 S.W.3d 379, 388 (Tex.App.-Austin 2010, pet. denied); *In re Amaya,* 34 S.W.3d 354, 355–56 (Tex.App.-Waco 2001, orig. proceeding); *Parks v. Huffington,* 616 S.W.2d 641, 645 (Tex.Civ.App.-Houston [1st Dist.] 1981, writ ref'd n.r.e.). We will grant mandamus relief only if we determine that the trial court clearly abused its discretion or violated a duty imposed by law and that there is no other adequate remedy by law. *Walker v. Packer,* 827 S.W.2d 833, 842 (Tex.1992); *Johnson v. Fourth Court of Appeals,* 700 S.W.2d 916, 917 (Tex.1985).

***2** Cadle argues that its motion to compel discovery is governed by rule 201.2, which provides that if a court of another state issues a commission requiring a witness's deposition, "the witness may be compelled to appear and testify in the same manner and by the same process used

for taking testimony in a proceeding pending in this State." Tex.R. Civ. P. 201.2. We agree with Cadle that rule 201.2 "authorizes Texas courts to enforce foreign discovery orders," but note that it does not *mandate* that Texas courts do so. *See id* . (witness *may* be compelled to appear for deposition). Further, under rule 621a, entitled, "Discovery and Enforcement of Judgment," a judgment creditor may only seek post-judgment discovery to aid in the enforcement of a judgment that "has not become dormant." *Id.* R. 621a.[1] Finally, section 16.066 of the civil practice and remedies code provides that "[a]n action against a person who has resided in this state for 10 years prior to the action may not be brought on a foreign judgment rendered more than 10 years before the commencement of the action in this state." Tex. Civ. Prac. & Rem.Code § 16.066(b).[2]

Cadle's judgment against Seavall is based on a long-dormant 1987 judgment. *See Lawrence Sys., Inc. v. Superior Feeders, Inc.,* 880 S.W.2d 203, 210–11 (Tex.App.-Amarillo 1994, writ denied) (later memorialization of earlier judgment is not new final judgment; instead, for purposes of limitations, original judgment date controls). Further, even if the 2002 judgment could be considered in isolation from the 1987 judgment, the 2002 judgment became dormant on June 24, 2012, before Cadle filed its motion in Travis County and before the New Mexico court signed the Commission. *See* Tex. Civ. Prac. & Rem.Code § 16.066(b). Therefore, Cadle may not maintain an action against Seavall based on either judgment.

Cadle insists that its discovery proceeding here does not amount to "an action" within the meaning of section 16.066 and instead is "merely a ministerial proceeding." It is true that most "actions" related to foreign judgments involve efforts to enforce or domesticate a foreign judgment. *See, e.g., McCoy v. Knobler,* 260 S.W.3d 179, 181 (Tex.App.-Dallas 2008, no pet.); *Reading & Bates Constr. Co. v. Baker Energy Res. Corp.,* 976 S.W.2d 702, 705 (Tex.App.-Houston [1st Dist.] 1998, pet. denied); *Lawrence Sys.,* 880 S.W.2d at 206. However, "an action" is not defined by section 16.066, and the common usage of the phrase in the legal context is fairly broad. *See Lawrence Sys.,* 880 S.W.2d at 207–08. Although a legal action is usually a proceeding brought in an attempt to obtain a judgment against another party, *see id.* (quoting *Garcia v. Jones,* 147 S.W.2d 925, 926 (Tex.Civ.App.-El Paso 1940, writ dism'd judgm't cor.)), some actions, such as this one, seek to demand one's rights from another or to assist in the enforcement of a prior judgment. *See* Black's Law Dictionary 32–33 (defining "action" as "civil or criminal judicial proceeding"; cited sources include "special proceedings" and "any other proceedings in which rights are determined" within definition), 1572 (defining "suit" as "proceeding by a party or parties against another in a court of law" and "ancillary suit" as action that "grows out of and is auxiliary to another suit and is filed to aid the primary suit, to enforce a prior judgment, or to impeach a prior decree") (9th ed.2009); *see also* Black's Law Dictionary 28 (6th ed.1990) ("action" is "formal complaint within the jurisdiction of a court of law" and is "legal and formal demand of one's right from another person or party made and insisted on in a court of justice," including "all the formal proceedings in a court of justice attendant upon the demand of a right made by a person of another in such court").

***3** Cadle's petition in the trial court is titled "First Amended Petition *for Miscellaneous Action* for Application for Discovery Pursuant to Texas Rule of Civil Procedure 201.2." (Emphasis added.) Although Cadle may not be seeking a judgment in the Texas courts in this proceeding, it is seeking judicial assistance in enforcing what it asserts is its legal right to depose Seavall and obtain discovery documents from him, presumably to assist it in enforcing the dormant judgments. Therefore, Cadle has filed an action against Seavall, relying on dormant judgments, and section 16 .066 provides that such an action may not be brought. *See* Tex. Civ. Prac. & Rem.Code § 16.066(b). The trial court abused its discretion in ordering Seavall to submit to a deposition and to produce documents in response to Cadle's discovery requests. We therefore conditionally grant Seavall's petition for writ of mandamus and direct the trial court to vacate its order requiring Seavall to submit to deposition and to respond to Cadle's discovery requests. The writ will issue only if the trial court does not act in accordance with this opinion.

All Citations

Not Reported in S.W.3d, 2013 WL 3013872

Footnotes

1 *See also* Tex. Civ. Prac. & Rem.Code § 34.001 (if writ of execution is not issued within ten years after judgment's rendition, "the judgment is dormant and execution may not be issued on the judgment unless it is revived").

2 And even if we read rule 201.2 as being in conflict with section 16.066, a statute trumps a rule of procedure in the event of a conflict. *See Johnstone v. State,* 22 S.W.3d 408, 409 (Tex.2000) ("when a rule of procedure conflicts with a statute, the statute prevails unless the rule has been passed subsequent to the statute and repeals the statute as provided by Texas Government Code section 22.004"); *Few v. Charter Oak Fire Ins. Co.,* 463 S.W.2d 424, 425 (Tex.1971) ("when a rule of the court conflicts with a legislative enactment, the rule must yield").

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2011 WL 590736
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of Stamford-Norwalk.

Michelle MARTUCCI

v.

Anthony MARTUCCI.

No. FSTFA094016203S.
|
Jan. 20, 2011.

Opinion

KEVIN TIERNEY, J.T.R.

***1** This motion seeks sanctions for the defendant's failure to comply with Plaintiff's First Set of Interrogatories dated December 11, 2009 (# 126.00, Exhibit A) and Plaintiff's Request for Production dated December 11, 2009 (# 126.00, Exhibit A) in this contested dissolution of marriage action. This court has applied the standards and procedures set forth in *Millbrook Owners Association, Inc. v. Hamilton Standard et al.,* 257 Conn. 1 (2001). "In order for a trial court's order of sanctions for violation of a discovery order to withstand scrutiny, three requirements must be met. First, the order to be complied with must be reasonably clear. In this connection, however, we also state that even an order that does not meet this standard may form the basis of a sanction if the record establishes that, not withstanding the lack of such clarity, the party sanctioned in fact understood the trial court's intended meaning ... Second, the record must establish that the order was in fact violated ... Third, the sanction imposed must be proportional to the violation." *Id.* at 17-18.

The court heard testimony, reviewed the documents on file, considered the exhibits offered at the January 11, 2011 hearing at which both parties were represented and appeared and applied the law of discovery. The court makes the following finding of facts and legal conclusions.

The plaintiff, wife, commenced this action seeking a dissolution of marriage against the defendant, husband, returnable April 28, 2009. Trial has been scheduled to commence in July 2011. At the commencement of this litigation both parties resided in Stamford, Connecticut. The plaintiff continues to reside in Stamford and the defendant has since moved to the State of New York.

The defendant filed two financial affidavits with this court; September 21, 2009 (# 113.10) unsealed by court order on September 13, 2010 (# 136.00) and January 11, 2011 (no computer number has yet been assigned). The January 11, 2011 financial affidavit is sealed. The defendant's income comes from his wholly owned business located in Bronx, New York as well as rental and other investment income. The defendant's annual gross income before taxes has been reported by the defendant in documents on file with this court as follows: $426,768 in his unsealed September 21, 2009 financial affidavit (# 113.10); $165,464 in his January 11, 2011 sealed financial affidavit (not yet assigned a computer number by the clerk); $896,835 in a federal income tax return filed by the plaintiff and defendant jointly for 2007 (Exhibit 1, January 11, 2011 hearing), $554,304 in a federal income tax return filed by the defendant married filing separately for 2009 (Exhibit 2, January 11, 2011 hearing) and $157,201 in a Profit and Loss Statement from the defendant's wholly owned equipment rental business located in Bronx, New York for the period of January 1, 2010 through December 8, 2010 (Exhibit 4, January 11, 2011 hearing). The gross income from the defendant's wholly owned equipment rental business, Tucci Equipment Rental Corp., was reported to be $5,755,233.03 for the period of January 1, 2010 through December 8, 2010 (Exhibit 4, January 11, 2011 hearing); $7,043,036 on Form 8903 (Exhibit 2, January 11, 2011 hearing) and $4,942,082 on Form 8903 (Exhibit 1, January 11, 2011 hearing).

***2** The plaintiff claims that she needs the supporting documents and information requested in the December 11, 2009 discovery in order to accurately determine the defendant's gross and net income. She claims that the above listed sources are inconsistent, unreliable and unverified.

The defendant failed to file a financial affidavit within the time required by P.B. Section 25-30. As a result the plaintiff was required to file Plaintiff's Motion to Compel Financial Affidavit, Pendente Lite dated July 10, 2009 (# 108.00). Without the defendant's financial affidavit, the plaintiff was required to assign her Motion for Alimony and Child Support Pendente Lite dated April 29, 2009 (# 103.00/# 104.00) for fifteen separate short calendar dates. On August 17, 2009 the court (Shay, J.) ordered that all financial orders on motions # 103.00/# 104.00 would be retroactive to August

17, 2009 (# 103.00/ # 104.00). On September 8, 2009 the court (Schofield, J.) ordered that the pendente lite alimony and child support motions (# 103.00/# 104.00) be assigned for "the short calendar on 9/21/09. If defendant fails to show he will be ordered to pay $12,000/month in unallocated alimony and child support."

On September 21, 2009, the pendente lite motions # 103.00/ # 104.00 were heard and the defendant filed his financial affidavit (# 113.10). The parties stipulated to pendente lite alimony and child support and the court, Shay, J. so ordered (# 114.10). That order on motions # 103.00/# 104.00 stated in paragraph 4: "Wife shall no longer be an employee of Tucci Equipment, Inc., and shall waive any claim to unemployment as a result hereof."

From a comparison of both financial affidavits submitted to the court for the September 21, 2009 hearing (# 112.10 and # 113.10) and eliminating duplicate references, the court concludes that those financial affidavits disclose that the net joint assets of the parties are over $3,500,000. In addition three assets were disclosed on the plaintiff's affidavit (# 112.10) with no value: Tucci Equipment Rental Corporation, value to be determined, Tucci Company, value to be determined and Martucci Development, value to be determined. The defendant's September 21, 2009 financial affidavit (# 113.10) makes no mention of these three assets. The court notes that one or both of the Tucci entities have gross annual income of between $4,942,082 and $7,043,036 yet neither party submitted any valuation for these business entities.

On September 13, 2010 the court, Wenzel, J., ordered that the defendant "file an updated financial affidavit with the court and plaintiff by September 30, 2010." (# 135.00). The defendant failed to comply with this September 13, 2010 financial affidavit discovery order. The plaintiff filed a Motion for Contempt Re: Failure to Provide Updated Financial Affidavit Pendente Lite dated November 23, 2010 (# 144.00) claiming that the defendant still had not filed an updated financial affidavit. Motion # 144.00 was assigned and partially heard by the undersigned on December 10, 2010. As of December 10, 2010 the defendant had not filed an updated financial affidavit. Not all motions were heard on December 10, 2010 and the hearing was continued to January 11, 2011. At the commencement of the January 11, 2011 hearing the defendant filed an updated financial affidavit with the court and presented a copy to the plaintiff in open court. That January 11, 2011 financial affidavit is sealed in the file.

***3** The defendant did not file any objections to the two December 11, 2009 discovery requests filed by the plaintiff. The defendant filed a Motion for Extension of Time, Pendente Lite dated January 18, 2010 (# 124.00) requesting until February 11, 2010 or thirty days in order to answer and/or object to the two discovery requests. The motion contains a court order "Compliance by March 16, 2010 (Shay, J.)." After February 16, 2010 the defendant filed no objections to either discovery request. On March 17, 2010 the plaintiff filed a Motion for Order Pursuant to P.B. § 13-14 (# 126.00), which requested "that the court enter an order finding the defendant, Anthony Martucci ('defendant') in contempt for violating the Orders of the Court (Shay, J.) dated February 16, 2010 ordering that full compliance with outstanding discovery be made on or before March 16, 2010." The March 17, 2010 Motion for Order Pursuant to P.B. § 13-14 (# 126.00) was heard on March 29, 2010 and the following order entered: "GRANTED and it is further ORDERED: By April 16, 2010 documents to be provided. If not provided $100.00 per diem to the moving party." (Malone, J., # 126.00.) The above order was in Judge Malone's handwriting and was signed by Judge Malone on page 8 of motion # 126.00. The March 29, 2010 transcript on file quotes the following March 29, 2010 order by Judge Malone on motion # 126.00: "You have until April 16th to provide the documents. If not, there will be $100 per diem to the moving party." (Exhibit 3, January 11, 2011 hearing.) Prior to March 29, 2010 the defendant had not provided a single document in discovery.

On April 16, 2010 at 4:00 p m. the defendant delivered to plaintiff's counsel a box of documents. The plaintiff's counsel reviewed the box of documents and wrote a detailed letter with a list of incomplete items dated April 19, 2010. The list of incomplete items included ten bank accounts, five credit cards and a listing of six other business statements and reports. No records of real estate holdings were provided. Plaintiff's counsel wrote to defendant's counsel to resolve the discovery matters on July 14, 2010, August 19, 2010, September 1, 2010 and October 18, 2010. No further documents were provided in response to these four letters.

On November 4, 2010 this instant Motion for Contempt Re: Discovery Compliance (# 137.00) was filed. In that Motion the plaintiff requested the following relief: (1) a finding of contempt; (2) $100.00 per day retroactive to April 16, 2010 as per the March 29, 2010 order of Malone, J.; (3) a preclusion of the defendant from offering earnings evidence; (4) a negative inference; (5) pendente lite alimony and support increase to

$25,000 per month based on the documents provided; and (6) attorney fees and costs.

The court finds that the two December 11, 2009 discovery requests (# 126.00) are orders of this court pursuant to Practice Book § 13-6, 13-9, 25-31 and 25-32. The court finds that the court has ordered the defendant to comply with the two December 11, 2009 discovery requests (# 126.00) on January 19, 2010 (Shay, J.); February 16, 2010 (Shay, J.) and March 29, 2010 (Malone, J.). The court finds that the order to be complied with was reasonably clear.

***4** The court finds that the documents provided to the plaintiff on April 16, 2010 were incomplete and failed to minimally respond to the income, assets and financial matters addressed in the two December 11, 2009 requests (# 126.00). The court finds that the defendant's attempted compliance after April 16, 2010 did not correct the deficiencies noted in plaintiff's April 19, 2010 list. (# 137.00, Exhibit F.). The court finds that the defendant is in violation of the two December 11, 2009 discovery requests as ordered by the Practice Book and by the three separate court orders.

Practice Book Section 25-31 incorporated the discovery sanction sections of the Practice Book for family matters. Among the sanctions that may be imposed are: "The entry of an order that the matters regarding which the discovery was sought or other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order ." P.B. § 13-14(b)(3) and "The entry of an order prohibiting the party who has failed to comply from introducing designated matters in evidence." P.B. § 13-14(b)(4). Due to the defendant's continuing failure to provide financial discovery both as to the filing of an updated financial affidavit and complete compliance with the two December 11, 2009 discovery requests, the court finds that sanctions in proportion to the violation must be imposed including two orders under P.B. § 13-14(b)(3) and (4) as to the defendant's income. This court finds that three court sanctions have already been imposed: January 19, 2010 for compliance, February 16, 2010 for compliance by a date certain and March 29, 2010 for compliance by a new date certain coupled with a per diem charge for failure of compliance beyond that new date certain.

On November 22, 2010 the court, Malone, J. appointed Attorney Jessica Esterkin as a Special Discovery Master. The order further stated: "She should meet with the parties by Dec. 3rd, 2010 to go through discovery issues." Attorney Esterkin attended the two court hearings presided over by the undersigned on December 10, 2010 and January 11, 2011. Despite her efforts, the defendant failed to comply with the two December 11, 2009 requests for discovery. The court finds that progressive sanctions have been imposed on the defendant.

ORDER

1. The court finds that the defendant is in violation of the two discovery requests dated December 11, 2009 (# 126.00) and these requests have been ordered by the court to be complied with.

2. The court hereby orders the defendant to comply completely, fully, accurately and timely with the two December 11, 2009 requests (# 126.00) by Wednesday, February 23, 2011 at 4:00 p.m. at the office of the plaintiff's counsel of record.

3. The court hereby assigns this instant Motion for Contempt Re: Discovery Compliance dated November 4, 2010 (# 137.00) for a short calendar hearing on Monday, February 28, 2011 at 9:30 a.m. in Courtroom 3A, Superior Court, 123 Hoyt Street, Stamford, Connecticut, 06905. Both parties and their counsel shall be present.

***5** 4. The defendant is to pay the attorney fees and disbursements incurred by the Special Discovery Master, Attorney Jessica Esterkin, by Wednesday, February 23, 2011 at 4:00 p.m. Attorney Esterkin shall submit to the defendant's counsel with a copy to the plaintiff's counsel, a statement of fees and costs requested on or before February 1, 2011. This statement shall not be filed with the court. Any issues concerning the fees and costs of Attorney Jessica Esterkin and the payment of these fees and costs will be heard by the court on the February 28, 2011 hearing, including but not limited to whether the defendant paid these fees and costs to Attorney Esterkin by Wednesday, February 23, 2011 at 4:00 p.m.

5. On March 29, 2010 J. Malone ordered: "If not provided $100.00 per diem to the moving party." The plaintiff is the moving party. The discovery was due on April 16, 2010 as per Judge Malone's March 29, 2010 order. As of January 11, 2011 the defendant had not complied with the discovery orders. The court hereby continues J. Malone's order as an order of this court.

6. This court orders that the defendant pay to the plaintiff the sum of $27,000 for the 270 days from April 17, 2010 through and including January 11, 2011. That $27,000 shall be delivered by Wednesday, February 2, 2011 at 4:00 p.m. at the office of the plaintiff's counsel of record by personal check, bank check, certified check or money order. No cash or cash equivalent shall be delivered.

7. If said payment of $27,000 is not so delivered, by Wednesday, February 2, 2011 at 4:00 p m. the plaintiff may file the appropriate motion and request further sanctions. Those further motions and/or requests are also assigned for a hearing on Monday, February 28, 2011 at 9:30 a m. in Courtroom 3A, Superior Court, 123 Hoyt Street, Stamford, Connecticut, 06905.

8. The court finds that the last federal income tax return filed by the defendant prior to the commencement of this dissolution of marriage action was the 2007 Form 1040. (Exhibit 1, January 11, 2011 hearing.) The court notes that a portion of the W-2 income set forth in that income tax return was paid to the plaintiff, Michelle Martucci, and the September 21, 2009 court order prevented the plaintiff from receiving any further employment remuneration from her former employer, Tucci. Therefore all of the income sources set forth in that 2007 income tax return are now available to the defendant. (Exhibit 1, January 11, 2011 hearing, $896,835 "total income.") In accordance with P.B. § 13-14(b)(3) the court finds that the plaintiff sought discovery as to the defendant's income. Since the defendant has failed to provide such discovery so the plaintiff could more accurately determine his income, the court finds that an order in accordance with P.B. § 13-14(b)(3) is a measured appropriate sanction.

The court finds that the defendant's current annual income from his salary, wages, business profits, rents, royalties, partnerships, S corporations, etc. is established at $896,835. Said $896,835 shall be used by this court and future courts as the defendant's current annual income for all purposes in this instant dissolution of marriage action.

***6** 9. In the event the defendant complies with the two December 11, 2009 discovery requests, the defendant shall be permitted to file a Motion with this court in order to modify and/or eliminate order # 8 that the defendant's current income for all purposes is established at $896,835 annually.

10. The defendant is prohibited from introducing any evidence regarding his income, earnings, and earning capacity for so long as order # 8 remains in effect pursuant to P.B. § 13-14(b)(4).

11. The plaintiff's request for attorney fees will be considered at the February 28, 2011 hearing.

12. The court will determine at the February 28, 2011 hearing if the defendant should be found in contempt.

13. The court retains jurisdiction for further discovery sanctions pursuant to this November 4, 2010 Motion for Contempt Re: Discovery Compliance (# 137.00).

14. This court has entered sanctions pursuant to P.B. § 13-14(b)(3) and P.B. § 13-14(b)(4) solely as to the defendant's current annual income. The court reserves the right to enter further sanctions as to any other financial or factual issues including but not limited to assets, liabilities income and expenses.

All Citations

Not Reported in A.3d, 2011 WL 590736

End of Document

2011 WL 726697
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut, Judicial District of Litchfield.

NEW ENGLAND BANK

v.

Richard A. GREEN, Sr. et al.

No. CV106002946S.
|
Feb. 4, 2011.

Opinion

JOHN A. DANAHER, III, J.

***1** The plaintiff moves to compel defendants, Richard A. Green, Sr., and Stephen E. Green, Jr., ("the defendants") to attend a deposition. If either defendant fails to attend the deposition, the plaintiff asks the court to issue a capias for the arrest of the nonappearing party. The motion to compel is granted.

FACTUAL BACKGROUND

The plaintiff initiated this action on August 12, 2010, seeking a prejudgment remedy against the defendants up to the value of $750,000. The plaintiff asserts that in 2004 the defendants agreed to be responsible for a May 24, 2004, loan made to an entity known as "ERA II." The original amount of the loan is alleged to have been $736,000. The plaintiff claims that the loan is in default with a principal balance, as of June 21, 2010, in the amount of $531,799.95 and accrues interest at the rate of $75.88 per day. The defendants did not appear in this action and were defaulted on September 16, 2004.

The plaintiff attempted to depose Richard A. Green, Sr., pursuant to a notice of deposition and subpoena duces tecum that a marshal served on Richard A. Green, Sr., on September 22, 2010. The deposition was originally scheduled to take place on October 6, 2010, but was rescheduled to October 7, 2010. The plaintiff's counsel notified Richard A. Green, Sr., of the rescheduled deposition by letter, but Richard A. Green Sr., did not appear for the deposition on either October 6, 2010, or October 7, 2010. The plaintiff similarly attempted to depose Stephen E. Green, Jr., on the same dates that Richard A. Green, Sr. was to be deposed. The plaintiff was unable to make personal service on Stephen E. Green, Jr. but did provide him with notice of the deposition together with a designation of documents to be produced at the deposition.

The plaintiff asserts that neither of the defendants contacted plaintiff's counsel indicating, for any reason, that they could not attend the deposition. The plaintiff attached a copy of the notice of deposition for each defendant, and a copy of the marshal's return of service regarding Richard A. Green, Sr., to his motion to compel.

The plaintiff wishes to depose the defendants regarding the whereabouts and/or the disposition of heavy equipment that was allegedly purchased with the loan proceeds that are the subject of this action. The plaintiff asks this court to order the defendants to appear and be deposed and to produce the documentation that was already served upon them. If either defendant fails to appear for such a deposition, the plaintiff seeks a capias for the arrest of the nonappearmg defendant.

DISCUSSION

The Practice Book provides that "at any time after the commencement of the action or proceeding ... [a party may] take the testimony of any person, including a party, by deposition upon oral examination. The attendance of witnesses may be compelled by subpoena as provided in Section 13–28." Practice Book § 13–26. Practice Book § 13–28(b) provides that a judge "may issue a subpoena, upon request, for the appearance of any witness before an officer authorized to administer oaths within this state to give testimony at a deposition subject to the provisions of Sections 13–2 through 13–5, if the party seeking to take such person's deposition has complied with the provisions of Section 13–26 and 13–27." Practice Book § 13–27(a) provides that "[a] party who desires to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. Such notice ... shall be served upon each party or each party's attorney in accordance with Sections 10–12 through 10–17. The notice shall state the time and place for taking the deposition, the name and address of each person to be examined ... If a subpoena duces tecum is to be served on the person to be examined, the designation of the

materials to be produced as set forth in the subpoena shall be attached to or included in the notice." General Statutes § 52–143(a) provides: "[s]ubpoenas for witnesses shall be signed by the clerk of the court or a commissioner of the Superior Court and shall be served by an officer, [or] indifferent person ... The subpoena shall be served not less than eighteen hours prior to the time designated for the person to appear, unless the court orders otherwise."

***2** The court finds that the plaintiff complied with all applicable provisions of the Practice Book and General Statutes § 52–143(a). There is nothing in the record, to date, that justifies the defendants' failure to appear for their depositions. The court finds that the plaintiff has properly filed its motion to compel. A motion to compel is governed by Practice Book § 13–14 which provides in relevant part: "(a) If any party ... has failed to appear and testify at a deposition duly noticed pursuant to this chapter ... the judicial authority may, on motion, make such order as the ends of justice require. (b) Such orders may include the following ... (2) The award to the discovering party of the costs of the motion, including a reasonable attorneys fee ..." "The granting or denial of a discovery request rests in the sound discretion of the court." *Standard Tallow Corp. v. Jowdy,* 190 Conn. 48, 57, 459 A.2d 503 (1983).

The defendants were each properly summoned to appear at a deposition. "In our statutes, the verb 'summon' does not mean to ask or request to attend or appear, but to command to attend or appear, usually at a legislative or judicial proceeding. More than a hundred years ago, our Supreme Court recognized the duty of citizens to testify 'when legally required to do so.' *In re Clayton,* 59 Conn. 510, 521, 21 A. 1005 (1890). The procedure for 'summoning' a witness is usually to serve him with a subpoena or a capias." *Andover Lake Management v. Andover,* Superior Court, judicial district of Tolland, Docket No. 50306 (October 17, 1995, Rubinow, J.).

General Statutes § 52–143(e) provides in relevant part: "if any ... person upon whom a subpoena is served to appear and testify in a cause pending before any court and to whom one day's attendance and fees for traveling court have been tendered, fails to appear and testify, without reasonable excuse, he shall be fined not more than twenty-five dollars and pay all damages to the party aggrieved; and the court or judge, on proof of the service of a subpoena containing the statement as provided in subsection (d), or on proof of the service of a subpoena and the tender of such fees, may issue a capias directed to some proper officer to arrest the witness and bring him before the court to testify." The "issuance of a capias is in the discretion of the court ... [which] has the authority to decline to issue a capias when the circumstances do not justify or require it." (Internal quotation marks omitted.) *Housing Authority v. DeRoche,* 112 Conn.App. 355, 372–73, 962 A.2d 904 (2009).

The plaintiff has met all requirements precedent to the issuance of a capias. Indeed, the plaintiff produced a letter, allegedly signed by both defendants, in which they appear to claim that they are not subject to the jurisdiction of this court.[1] Under these circumstances, there is a substantial basis for the issuance of a capias for each of the defendants. Nonetheless, the court will not, at this stage, exercise its discretion to issue a capias.

***3** The court orders Richard A. Green, Sr., 63 Eagle Ridge, Torrington, CT 06790, to appear for a deposition to be held at the Litchfield Courthouse, 15 West Street, Litchfield, Connecticut, on the 17th day of March 2011, at 11:00 am. The plaintiff will arrange for the service of this order by an officer or indifferent person, together with the designation of materials to be produced by Richard A. Green, Sr. If service cannot be effected, the plaintiff will notify the deponent of the scheduled deposition by regular mail, postage prepaid, and by certified mail.

Following the plaintiff's deposition of Richard A. Green, Sr., on the date and at the time set forth herein, the court will make itself available to the plaintiff to consider any appropriate claims for costs and attorneys fees associated with the originally scheduled deposition and this motion. If Richard A. Green, Sr., fails to appear on the date and at the time set forth herein, or fails to produce the designated materials, or fails to respond to the deposition questions in good faith, the court will make itself available to hear the plaintiff's request for the issuance of a capias or any other appropriate order.

The court also orders Stephen E. Green, Jr., 24 Camp Dutton Road, Litchfield, CT 06759, to appear for a deposition to be held at the Litchfield Courthouse, 15 West Street, Litchfield, Connecticut, on the 17th day of March 2011, at 12:00 pm. The plaintiff will arrange for the service of this order by an officer or indifferent person, together with the designation of materials to be produced by Stephen E. Green, Jr. If service cannot be affected, the plaintiff will notify the deponent of the scheduled deposition by regular mail, postage prepaid, and by certified mail.

Following the plaintiff's deposition of Stephen E. Green, Jr., on the date and at the time set forth herein, the court will make itself available to the plaintiff to consider any appropriate claims for costs and attorneys fees associated with the originally scheduled deposition and this motion. If Stephen E. Green, Jr., fails to appear on the date and at the time set forth herein, fails to produce the designated materials, or fails to respond to the deposition questions in good faith, the court will make itself available to hear the plaintiff's request for the issuance of a capias or any other appropriate order.

So ordered.

All Citations

Not Reported in A.3d, 2011 WL 726697

Footnotes

1 The letter states, in relevant part, "The court's alleged notices and claims don't cut it." The defendants also express their view that "properly executed process service is not merely the delivery of papers—it requires that they be accepted ..." The latter assertion is, of course, incorrect. *Phoenix Limousine Service, Inc. v. Hilchen,* Superior Court, judicial district of Fairfield, Docket No. CV 000378706 (June 13, 2001, Skolnick, J.) ("Service of a subpoena 'upon' a person does not require physical acceptance of it, if the person is given notice of it and its contents").

1990 WL 271143

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of New Haven.

Nancy SANSONE, et al.

v.

Matthew HASELDEN.

Jamie L. MORRIS

v.

Walter T. WILLIS, et al.

Nos. 28 83 29, 29 31 67.

|

April 18, 1990.

MEMORANDUM OF DECISION ON THE RIGHT TO COMPEL AN OUT-OF-STATE DEFENDANT'S DEPOSITION IN CONNECTICUT

BERDON, Judge.

***1** The defendant Matthew Haselden who resides in Texas and the defendant Walter T. Willis who resides in Missouri seek orders protecting them from being required to appear in Connecticut to have their depositions taken.

In 1978, § 246(c) of the Rules of Practice was adopted which provided that depositions of an out-of-state defendant may be taken in any county in this state in which he was personally served or taken by notice "at any place within thirty miles of the defendant's residence or within the county of his residence or at such other place as is fixed by order of the court." This rule is consistent with the general practice before the federal courts. 4 Moore, Federal Practice, § 26.70 (2d ed.1989).

In both the above entitled cases, the defendants were neither personally served,[1] nor, of course, is their place of residence within thirty miles of the State of Connecticut. Accordingly, both plaintiffs rely on that portion of § 246(c) which authorizes the court to fix the place of the deposition.

No hard rule should be set to govern when the court should exercise its discretion to order an out-of-state defendant to appear in Connecticut or some other place not specifically provided for in § 246(c) for a deposition. The court in exercising its discretion must do so in a manner which accommodates the special circumstances of each case. Some of the factors it should consider are the financial circumstances of the parties, whether the plaintiff seeking to take the deposition of the out-of-state defendant offers to pay his or her travel and living expenses, whether the defendant was personally served in Connecticut with the writ and complaint while he or she was a resident and thereafter voluntarily moved out of Connecticut, the hardship that travel may impose on a party, the availability of counsel being able to promptly resolve disputes which require a judicial determination if the deposition is taken in the forum, the effectiveness of obtaining the discovery through other means such as written iterrogatories or the taking of the defendant's deposition in Connecticut at the commencement of trial, and such other considerations.

In *Sansone,* the plaintiff seeks to take the defendant's deposition in Connecticut on the grounds that the motor vehicle accident which is the subject matter of the suit occurred in Connecticut, the defendant was personally served with the writ and complaint when he was a resident of Connecticut, a Connecticut attorney filed an appearance on the defendant's behalf, and sometime thereafter the defendant voluntarily removed himself from the state to an undisclosed address in Texas. Furthermore, the plaintiff has submitted an affidavit stating that she is unemployed, her husband is disabled, and that they do not have sufficient funds to pay her attorney to travel to Texas nor funds to reimburse the defendant for his travel expenses. Under these circumstances the defendant Matthew Haselden, at his own expense, will be required to attend a deposition at a mutually convenient place and time in the state of Connecticut. See *McLean v. Smith,* 13 Conn.L.Trib. 42 (October 26, 1987).

***2** In *Morris,* the defendant was at all relevant times a resident of Columbus, Missouri, was involved in a vehicular accident with the plaintiff in this state and was served pursuant to the motor vehicle long arm statute, General Statutes § 52-62. These facts differ materially from those of *Sansone.* Nevertheless, in urging that the court exercise its discretion to compel the defendant at his expense to give his deposition in this state, the plaintiff argues that she is without funds to take the defendant's deposition in Missouri or pay his expenses to travel to Connecticut. These reasons, together with any other hardship or other matters the court should consider, should be put in an affidavit form by the plaintiff. The defendant should

also be given an opportunity to submit an affidavit regarding his circumstances. Accordingly, the protective order sought by the defendant *Walter T. Willis* is granted without prejudice on the part of the plaintiff to seek the court's permission to have the defendant's deposition taken in Connecticut upon filing a motion and appropriate supporting affidavit.

In sum, in the case of *Nancy Sansone v. Matthew Haselden* (No. 28 83 29) the plaintiff's motion to fix the place for defendant's deposition (No. 117) is granted in that the deposition shall take place in Connecticut, at a place and time mutually convenient to the parties, and the defendant shall pay his own expenses to attend said deposition. In the case of *Jamie L. Morris v. Walter T. Willis* (No. 29 81 67), the defendant's motion for protective order (No. 112) is hereby granted without prejudice to the plaintiff taking further action on this issue.

All Citations

Not Reported in A.2d, 1990 WL 271143, 1 Conn. L. Rptr. 520

Footnotes

1 The plaintiff *Morris* also argues that since § 52-62 of the General Statutes authorizes service of a process on the Commissioner of Motor Vehicles for out-of-state residents, that such service on the Commissioner constitutes the personal service required by § 246(c)(1) of the Practice Book which would require the defendant to attend a deposition in Hartford County. Service of a subpoena on the commissioner is clearly not service of process authorized by § 52-62, but merely constructive or substituted service. *Larrivee v. McGann,* 26 Conn.Sup. 508, 509 (1967). Proper service of a subpoena requires personal service. See *Gibney v. Lewis,* 68 Conn. 392 (1986); 81 Am.Jur. 2d, Witnesses § 12.

EXHIBIT D

DKT NO: X06-UWY-CV186046436-S : COMPLEX LITIGATION DKT

ERICA LAFFERTY

: JUDICIAL DISTRICT WATERBURY

v.

: AT WATERBURY, CONNECTICUT

ALEX EMRIC JONES : MARCH 22, 2021

DKT NO: X06-UWY-CV186046437-S

WILLIAM SHERLACH

v.

ALEX EMRIC JONES

DKT NO: X06-UWY-CV186046438-S

WILLIAM SHERLACH

v.

ALEX EMRIC JONES

HEARING

BEFORE THE HONORABLE BARBARA N. BELLIS, JUDGE

A P P E A R A N C E S :

Representing the Plaintiff(s):

ATTORNEY CHRISTOPHER MATTEI
ATTORNEY ALINOR STERLING

Representing the Defendant(s):

ATTORNEY KEVIN SMITH
ATTORNEY CAMERON ATKINS
ATTORNEY MARIO CERAME for defendant Genesis Comm.

Recorded By:
Darlene Orsatti

Transcribed By:
Darlene Orsatti
Court Recording Monitor
400 Grand Street
Waterbury, CT 06702

ATTY. SMITH: Yes, your Honor.

THE COURT: I just wanted to make sure there wasn't anything else that had been submitted that I missed.

ATTY. SMITH: No, your Honor. Not by the Jones defendants.

THE COURT: Okay. So, the ball is in your court, Attorney Smith. And I would be interested in hearing from you as to other restricted activities besides the purported recommendation from the physician, that your client not attend the depositions.

ATTY. SMITH: Yes, your Honor. I am not aware of any other restricted activities other than to say that he is remaining home under the supervision of this physician as we understand it, pending the results of tests that have been arranged.

THE COURT: Okay. And do you have - and I'll hear whatever argument that you might have, but do you have any evidence that the Court can hear?

ATTY. SMITH: Your Honor, we did receive a letter yesterday afternoon here at the office from the physician. Again, that has been - we've been authorized to share that with the Court in an ex parte manner for an in-camera review. And I can provide that to the Court. However, the client thus far as I understand it, has not authorized disclosure

was working, to the extent that that is working, while he was broadcasting, if he was broadcasting, I believe he was under the supervision of his physician.

THE COURT: So, you're taking the Court's time, right? And having - we did this on an emergency basis, and I'm not sure that I'm getting the information straight. But I don't see why there's any reason that any of this information should not be provided to the Court. So, to your knowledge, and if you don't know, we can take a recess and you sure can find out. To your knowledge, when did your client broadcast live yesterday, if at all? Do you know that information, or is that something you can find out? Because the suggestion was -

ATTY. SMITH: Your Honor, as I understand it, he was broadcasting at various points yesterday.

THE COURT: So was he broadcasting live after this purported recommendation from the doctor that he not attend his deposition? I'm just trying to figure out. Is the only restriction basically, you can - you're not restricted physically. You're not restricted from driving. You can broadcast live, but you just can't attend that deposition.

ATTY. SMITH: Your Honor, that I'm not sure. I don't think that when the letter was sent to us that it - sat to delineate exactly what all of the

DKT NO: X06-UWY-CV186046436-S : COMPLEX LITIGATION DKT

ERICA LAFFERTY

: JUDICIAL DISTRICT WATERBURY

v.

: AT WATERBURY, CONNECTICUT

ALEX EMRIC JONES : MARCH 22, 2022

DKT NO: X06-UWY-CV186046437-S

WILLIAM SHERLACH

v.

ALEX EMRIC JONES

DKT NO: X06-UWY-CV186046438-S

WILLIAM SHERLACH

v.

ALEX EMRIC JONES

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, G.A. #4, Waterbury, Connecticut, before the Honorable Barbara Bellis, Judge, on the 22nd day of March, 2022.

Dated this 23rd day of March, 2022 in Waterbury, Connecticut.

Darlene Orsatti

Court Recording Monitor

EXHIBIT E

UWY-X06-CV18-6046436-S	:	SUPERIOR COURT
ERICA LAFFERTY, ET ALS.,	:	COMPLEX LITIGATION
v.	:	AT WATERBURY, CONNECTICUT
ALEX EMRIC JONES, ET ALS.	:	MARCH 30, 2022
UWY-X06-CV18-6046437-S	:	SUPERIOR COURT
WILLIAM SHERLACH, ET AL.,	:	COMPLEX LITIGATION
v.	:	AT WATERBURY, CONNECTICUT
ALEX EMRIC JONES, ET ALS.	:	MARCH 30, 2022
UWY-X06-CV18-6046438-S	:	SUPERIOR COURT
WILLIAM SHERLACH, ET AL.,	:	COMPLEX LITIGATION
v.	:	AT WATERBURY, CONNECTICUT
ALEX EMRIC JONES, ET ALS.	:	MARCH 30, 2022

BEFORE THE HONORABLE BARBARA N. BELLIS, JUDGE

A P P E A R A N C E S :

Representing the Plaintiffs:
ATTORNEY CHRISTOPHER MATTEI
ATTORNEY MATTHEW BLUMENTHAL
ATTORNEY ALINOR STERLING
Koskoff Koskoff & Bieder
350 Fairfield Avenue
Bridgeport, CT 06604

Representing the Defendants, Alex Emric Jones; Infowars, LLC; Free Speech Systems, LLC; Infowars Health, LLC; Prison Planet TV, LLC:
ATTORNEY CAMERON ATKINSON
Pattis & Smith, LLC
383 Orange Street, #1
New Haven, CT 06511

Representing the Defendants, Genesis Communications Network, Inc.:
ATTORNEY MARIO CERAME
Brignole, Bush & Lewis
73 Wadsworth Street
Hartford, CT 06106

Recorded By:
Jocelyne Greguoli
Transcribed By:
Jocelyne Greguoli
Court Recording Monitor
400 Grand Street
Waterbury, Connecticut 06702

ATTY. MATTEI: Your Honor, we don't intend to present any evidence during the hearing today. We would ask that the Court accept as evidence the exhibits that we've attached to our pleadings and also the exhibits that the Jones defendants attached to their pleadings in connection with this motion. That, we think, is the record and -- and should be sufficient for the Court to make any findings it needs to make.

THE COURT: All right. Well, it's -- The way I'm looking at it, it is already part of the Court record by way of being attached as exhibits to the motions.

And so, Attorney Atkinson, please, the same question to you: Are you presenting any new evidence today or are we proceeding on what's been submitted to date?

ATTY. ATKINSON: Your Honor, as far as what we're prepared to do today, we were proceeding on what's been submitted. I would just note for the record that -- that if you -- your intention is to take up the motion for contempt today, we would request additional law time to prepare witnesses for -- to decide whether we're preparing witnesses for that sort of a hearing.

THE COURT: That -- That is what is down today. What is down today, which is clear, is the

enable us to determine whether such evidence exists that we -- in a form that we can present it to you.

It's -- In -- In our view, the Court's orders created a difficult choice for Mr. Jones. He was advised that if he incurred stress, that the consequences to his health could prove disastrous. While we freely concede he did not listen to the initial recommendations that his doctors made and, as I stated earlier, it took some persuading to get him to take this seriously, he ultimately did listen to his doctor's directives. The Court's order put him in an extraordinary difficult -- extraordinarily difficult position in that --

THE COURT: Attorney Atkinson, can I --

ATTY. ATKINSON: -- in that --

THE COURT: Can I please get back to an earlier point that you made with respect to the submitting additional evidence? So this hearing today was scheduled one week ago. It was scheduled one week ago today. I never received any motion for continuance, formally or informally, from any party indicating that more time was needed to arrange for witness testimony or other -- other evidence. If I had, I would have ruled on it.

So I just want to make sure the record is clear on that. And I did notice, much to my surprise, and I was delighted that the defendants' briefs, which

deadline, as far as I know, is April 8th in this long series of modifying scheduling orders for depositions.

I have to say that due to these repeated extensions, the several prior trial dates, as well as the age of the case, the existing trial date, which is jury selection on August 2nd and evidence on September 1st, is a firm trial date and parties and counsel should plan accordingly.

The Court's authority here is rooted not only in Practice Book Section 13-14, but the Court also has inherent sanctioning power. With respect to the issue of contempt, the Court finds by clear and convincing evidence that the defendant, Alex Jones, willfully and in bad faith violated without justification several clear Court orders requiring his attendance at his depositions on March 23rd and March 24th. That is, the Court finds that Mr. Jones intentionally failed to comply with the orders of the Court and that there was no adequate factual basis to explain his failures to obey the orders of the Court.

Now, while the Court has adjudicated Mr. Jones in contempt, Mr. Jones himself has the ability to purge the contempt and Mr. Jones is on notice that he has the ability to purge the contempt and the Court has the power to reduce the fines that it is going to impose once the contempt has been purged as follows:

The contempt will be purged when Mr. Jones completes two full days of depositions at the office of plaintiffs' counsel in Bridgeport. Mr. Jones is to pay conditional fines of $25,000 each weekday beginning on Friday, April 1st, increasing by $25,000 per weekday payable to the Clerk of the Court in Waterbury and it will be suspended on each day that Mr. Jones successfully completes a full day's deposition where Mr. Jones has given all counsel a minimum of 24 hours' notice of his availability to sit for that particular deposition.

So for example, if Mr. Jones' counsel this afternoon informs counsel that Mr. Jones will sit for his deposition on Friday -- that's sufficient notice to the parties, that's 24 hours -- and if he successfully appears and sits for his deposition on Friday, there will be no fine.

Another example: If Mr. Jones' counsel this afternoon informs counsel that Mr. Jones will sit for his deposition on Tuesday, April 5th and he does so successfully, the fine will be $25,000 for this Friday, April 1st. There will be no fine on Saturday or Sunday and there will be a $50,000 fine on Monday for a total fine of $75,000 to that point and so on.

The last day for the fines will be April 15th and that then gives Mr. Jones an opportunity to purge the contempt by producing himself for two full days

of deposition by April 15th. The Court recognizes that this fine, while a conditional fine, is also coercive, but finds that it is reasonable and necessary in this matter and again points out that Mr. Jones himself has the opportunity to complete his deposition and then request reimbursement of the fines that the Court has imposed.

The Court declines to issue a capias, although it recognizes that the plaintiffs may pursue that with the Texas Courts if they so desire.

The Court also finds that the plaintiffs are entitled to fees and costs in connection with the cancelled depositions that was requested in earlier motions and the details of which were provided in the briefs that were just filed today, so as I indicated earlier, for that reason, the Court will address the amount of the fees and costs that will be awarded at the next hearing giving the Jones defendants adequate time to respond.

It is clear, however, that the plaintiffs here simply want and are entitled to the deposition of Mr. Jones and that Mr. Jones has continued to attempt to deliberately disregard the Court's orders and attempts to manipulate the Court process. While paying the fees and costs will reimburse the plaintiffs for the costs incurred in attempting to procure Mr. Jones' deposition, it is not a substitute

UWY-X06-CV18-6046436-S	:	SUPERIOR COURT
ERICA LAFFERTY, ET ALS.,	:	COMPLEX LITIGATION
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WILLIAM SHERLACH, ET AL.,	:	COMPLEX LITIGATION
v.	:	AT WATERBURY, CONNECTICUT
ALEX EMRIC JONES, ET ALS.	:	MARCH 30, 2022
UWY-X06-CV18-6046438-S	:	SUPERIOR COURT
WILLIAM SHERLACH, ET AL.,	:	COMPLEX LITIGATION
v.	:	AT WATERBURY, CONNECTICUT
ALEX EMRIC JONES, ET ALS.	:	MARCH 30, 2022

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Waterbury at Waterbury, Connecticut, before the Honorable Barbara N. Bellis, Judge, on the 30th day of March, 2022.

Dated this 30th day of March, 2022 in Waterbury, Connecticut.

_____
Jocelyne Greguoli
Court Recording Monitor

EXHIBIT F

NO. X06-UWY-CV-18-6046436-S	**:**	**SUPERIOR COURT**
ERICA LAFFERTY, ET AL	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL	**:**	**MARCH 31, 2022**

NO. X06-UWY-CV-18-6046437-S	**:**	**SUPERIOR COURT**
WILLIAM SHERLACH	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL	**:**	**MARCH 31, 2022**

NO. X06-UWY-CV-18-6046438-S	**:**	**SUPERIOR COURT**
WILLIAM SHERLACH, ET AL	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL	**:**	**MARCH 31, 2022**

JONES DEFENDANTS' EMERGENCY MOTION TO STAY ORDER PENDING SUPREME COURT DECISION ON APPLICATION TO TAKE PUBLIC INTEREST APPEAL

Pursuant to Practice Book § 61-12 the Jones defendants move the Court for an order staying enforcement of the Court's order issued on March 30, 2022 holding Alex Jones in civil contempt and imposing a $25,000 per-weekday fine commencing on April 1, 2022 and increasing by $25,000 per-weekday thereafter until Mr. Jones sits for two days of depositions. The Jones Defendants have filed an application with the Connecticut Supreme Court pursuant to Conn. Gen. Stat. § 52-265a to appeal the Court's order, and, in the interests of justice, respectfully request that the Court stay its order, which imposes fines and compels the defendant to appear at a deposition in Connecticut until the Supreme Court has ruled on his application to appeal.

I. Relevant Facts

After discussions between counsel in the instant case on March 31, 2022, and notwithstanding having taken a public interest appeal to the Connecticut Supreme Court, Mr. Jones has agreed to appear in Connecticut for a deposition at the plaintiffs' law firm

on April 11, 2022. He requests a stay of the order imposing financial sanctions until April 11, 2022, understanding that failure to appear on the date would further compound his difficulties in the instant case.

II. Argument

The Jones Defendants request a stay of the Court's order of contempt sanctions pursuant to Practice Book § 61-12. § 61-12 allows the Court to order the stay of an order in a civil case in the interests of justice and reads in pertinent part:

> In noncriminal matters in which the automatic stay provisions of Section 61-11 are not applicable and in which there are no statutory stay provisions, any motion for a stay of the judgment or order of the Superior Court pending appeal shall be filed in the trial court. If the judge who tried the case is unavailable, the motion may be decided by any judge of the Superior Court. Such a motion may also be filed before judgment and may be ruled upon at the time judgment is rendered unless the court concludes that a further hearing or consideration of such motion is necessary. A temporary stay may be ordered sua sponte or on written or oral motion, ex parte or otherwise, pending the filing or consideration of a motion for stay pending appeal. The motion shall be considered on an expedited basis and the granting of a stay of an order for the payment of money maybe conditional on the posting of suitable security.
>
> In the absence of a motion filed under this section, the trial court may order, sua sponte, that proceedings to enforce or carry out the judgment or order be stayed until the time to file an appeal has expired or, if an appeal has been filed, until the final determination of the cause. A party may file a motion to terminate such a stay pursuant to Section 61-11.

Practice Book § 61-12.

"In the absence of a statutory mandate, the granting of an application or a motion for a stay of an action or proceeding is addressed to the discretion of the trial court . . . [T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of

judgment, which must weigh competing interests and maintain an even balance." (Citation omitted; internal quotation marks omitted.) *Lee v. Harlow, Adama And Friedman, P.C.,* 116 Conn. App. 289, 311-12 (2009)

In making a determination as to whether to issue a stay, the court is required to balance the equities our courts have consistently relied on *Griffin Hospital v. Commission on Hospitals & Health Care*, 196 Conn. 451, 493 (1985), which counsels the court to apply 'familiar equitable principles in the context of adjusting the rights of the parties during the pendency of the litigation until a final determination on the merits.' *Id.,* 458. While approving a general 'balancing of the equities test' as the benchmark for granting or denying a motion for stay, *Griffin* also recites a list of non-exclusive factors that a court may consider including the likely outcome on appeal, whether the movant faces irreparable prospective harm from the enforcement of the judgment, and the effect of the delay occasioned by a stay upon the non-moving parties. *Id.*, 458-59. The court may also consider "the public interest involved." (Footnote omitted.) *Griffin Hospital v. Commission on Hospitals & Health Care*, supra, 456.

In this case, the equities clearly favor granting the defendants' request for a brief stay to allow the Supreme Court to decide whether it will hear the public interest appeal. To be clear, Conn. Gen. Stat. § 52-265a provides that the "Chief Justice shall, within one week of receipt of the appeal rule whether the issue involves a substantial public interest…". The present motion is requesting the Court's order be stayed until April 11, 2022. If our Supreme Court elects to hear the public interest appeal, the Court's order will then be stayed pursuant to Practice Book § 61-11. The Court's recent order requires Mr. Jones to part with fines that could total more $1.5 million. The terms and severity of

this Court's sanction are undeniably extraordinary, and the Jones Defendants are entitled by law to seek review of the order.

Granting this brief stay will result in no prejudice to the plaintiffs in this case; will not result in an imposition on the Court or strain judicial economy, and is necessary to avoid irreparable physical and economic harm to Mr. Jones – particularly where Mr. Jones has already communicated his willingness to sit for a deposition to Plaintiffs' counsel and has proposed a date. To deny this request for a *brief* stay of the Court's sanctions order would quite simply result in substantial injustice.

Additionally, Mr. Jones is likely to prevail on the merits of his appeal. The Court's March 30, 2022 order conflicts with clearly established Connecticut Supreme Court precedent that prohibit a court imposing civil contempt sanctions from relying on the representations of counsel in indirect contempt proceedings. *Puff v. Puff*, 334 Conn. 341, 366 (2020). *Puff* also places the burden of establishing contempt on the party seeking an order of contempt. *Id*. at 365. The Plaintiffs unequivocally sought to carry this burden by representations of counsel, and the Court improperly shifted the burden to Mr. Jones to prove why he should not be held in contempt without requiring the Plaintiffs to first carry their burden. *Puff* prohibits contempt from issuing in such a manner. Thus, Mr. Jones is likely to prevail on the merits of his appeal.

WHEREFORE, the Jones Defendants respectfully request that the Court stay enforcement of its March 30, 2022 order until the Connecticut Supreme Court has ruled on their application to take a public interest appeal, that was filed earlier today.

Dated: March 31, 2022

Respectfully Submitted,

Alex Jones,
Infowars, LLC;
Free Speech Systems, LLC;
Infowars Health, LLC; and
Prison Planet TV, LLC

BY:/s/ Norman A. Pattis /s/
/s/ Cameron L. Atkinson /s/
Norman A. Pattis
Cameron L. Atkinson
PATTIS & SMITH, LLC
Juris No. 423934
383 Orange Street
New Haven, CT 06511
V: 203-393-3017 F: 203-393-9745
npattis@pattisandsmith.com
catkinson@pattisandsmith.com

ORDER

The foregoing having been heard; it is hereby ordered:

GRANTED / DENIED

_____

Judge/Clerk

CERTIFICATION

This is to certify that a copy of the foregoing has been emailed and/or mailed, this day, postage prepaid, to all counsel and pro se appearances as follows:

For Genesis Communications Network, Inc.:
Mario Kenneth Cerame, Esq.
Brignole & Bush LLC
73 Wadsworth Street
Hartford, CT 06106

For Plaintiffs:
Alinor C. Sterling, Esq.
Christopher M. Mattei, Esq.
Matthew S. Blumenthal, Esq.
KOSKOFF KOSKOFF & BIEDER
350 Fairfield Avenue
Bridgeport, CT 06604

For Trustee Richard M. Coan

Eric Henzy, Esq.
ZEISLER & ZEISLER P.C.
10 MIDDLE STREET
15TH FLOOR
BRIDGEPORT, CT 06604

/s/ Cameron L. Atkinson /s/
Cameron L. Atkinson

EXHIBIT G

DOCKET NO: UWYCV186046436S

SUPERIOR COURT

LAFFERTY, ERICA Et Al
V.
JONES, ALEX EMRIC Et Al

JUDICIAL DISTRICT OF WATERBURY
AT WATERBURY

4/1/2022

ORDER

ORDER REGARDING:
03/31/2022 789.00 MOTION FOR STAY

The foregoing, having been considered by the Court, is hereby:

ORDER:

Having applied the "balancing of the equities" test, in which four factors warrant consideration, i.e., (1) the likelihood of success on appeal; (2) whether the stay is necessary to avoid irreparable harm; (3) the effect of the stay on other parties; and (4) the public interest, the motion for stay is denied. See Griffin Hosp. v. Commission on Hospitals and Health Care, 196 Conn. 451, 456-457(1985). The motion represents that Mr. Jones has notified plaintiffs' counsel that he will attend a deposition on April 11, 2022. The movants are reminded, again, that should Mr. Jones choose to purge the contempt, as this motion suggests may be the case, he can move the court to return the funds.

Judicial Notice (JDNO) was sent regarding this order.

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Judge: BARBARA N BELLIS